

VERA EFFIGIES REVERENDI DOMINI
JOSEPHI HALL NORWICIENSIS COMITIS



The Picture represents the Forme, where dwells
A Mind, which nothing but that Mind exceeds.
There's Wit, Learning, Will, then Grace, then
Rationality at the rest: enough to prove
Auspicious the forward Conscience of this Time.
The Reverend Name of BISHOP is no Crime.

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The Picture represents the Forme, where dwells
A Mind, which nothing but that Mind exceeds.
There's Wit, Grace, Learning, Will; then Grace
That gives all the rest: enough to prove
Auspicious toward Conscience of this Time.
The Reverend Name of BISHOP is no Crime.

RESOLVTIONS
AND
DECISIONS

of
CONSCIENCE

In continuall Use amongst Men,

*Very necessary for their Information
and Direction in these evill Times.*

Ed: In foure Decades: & 10m.

The Second Edition, with some
ADDITIONALLS.

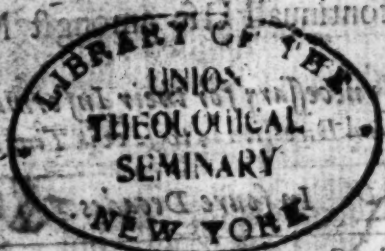
By Jos: HALL, B. Norwich.

LONDON,
Printed for N. B. and are to be sold by
R. Royston at the Angel in Frie-lane.
1650.

Roll Wynn

RESOLUTIONS

MCALPIN
COLLECTION



The Second Edition, with some

ADDITIONAL

By Jos: Hall, B. Norwich.

Printed for W. B. and sold by
R. B. for the Agent in London.
1870.



26
To the READER.

Of all Divinity that
is most use-
full, which de-

termines cases of Consci-
ence, and of all bases of
Conscience the Practicall
are most necessary; as a-
ction is of more concerne-
ment than speculation.

And of all practicall Ca-
ses those which are of
most cōmon use are of so
much greater necessity &

benefit

To the Reader.

benefit to be resolved, as the errors therof are more universall; and therefore more prejudiciall to the society of mankind: These I have selected out of many; and having turned over divers Casuists have pitch't upon those Decisions, which I hold most conformable to enlightened reason, and religion: sometimes I follow them, & sometimes I leave them for a better Guide.

To the Reader.

In the handling of all which, would I have affected that course which *Seneca* blames in his *Albatius*, to say all that might be spoken, I could easily have been more Voluminous, though perhaps not more satisfactory. If these lines meet with different judgments; I cannot blame either my selfe, or them. It is the opinion of some Schoolmen (which seems to be made good by that

To the Reader.

instance in the Prophet *Daniel**) that even the good Angels themselves may holily vary in the way, though they perfectly meet in the end: It is farre from my thoughts to obtrude these my Resolutions as peremptory, and magisteriall upon my Readers, I onely tender them submissely, as probable advices to the simpler sort of Christians;

* Dan. 10. 13. 20, 21, 32. 1.

and

To the Reader.

& as matter of grave censure to the learned.

May that infinite Goodnesse to whose only glory I humbly desire to devote my selfe and all my poore indeavours, make them as beneficial, as they are wel-meant to the good of his Church, by the unworthiest of his Servants

*Higham near Norwich,
March 29. 1650.*

J. H. B. N.

A 5

The

To the Reader

As a matter of great consequence
to the Christian world
May that infinite Good-
ness to whose only glory
I humbly desire to devote
myself and all my powers
under your noble patronage
be directed and employed
in the good of the
Church by the means
which of His Grace

Highgate, York
March 2. 1630.

J. H. B. M.

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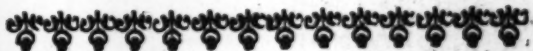
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I Have perused these foure Decades of Practicall Cases of Conscience with much satisfaction and delight, and finde them to be in respect of their subject matter so profitable, necessary and daily usefull; and so piously, learnedly and judiciously discussed and resolved, that they seem unto me best though they come last, (like the Wine in the marriage feast made sacred by Christs divine presence and miracle) and therefore doe well deserve (amongst many other the divine dishes and delicacies wherewith this right reverend, pious and learned Authour, hath plentuously furnished a feast for the spirituall nourishment and comfortable refreshing of Gods guests) both the approbation and commendation of all, and my selfe amongst the rest, though unworthy to passe my censure on such a subject.

John Downname.



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RESOLUTIONS.

The first Decade.

Cases of Profit and Traffick.

CASE I.

*Whether is it lawfull for me to raise
any profit by the loane of money?*



You may not expect a positive answer either way: Many circumstances are considerable ere any thing can be determined.

First, Who is it that borrows? A poore neighbour that is constrained out of need? or a Merchant that

B

takes

takes up money for a freer trade ? or a rich man that layes it out upon superfluous occasions ?

If a poore man borrow out of necessity, you may not expect any profit for the loane : (*Deuteronomy* 15. 7, 8, 9.) To the poorest of all we must give, and not lend : to the next ranke of poore we must lend freely : but if a man will borrow that money (which you could improve) for the enriching of himselfe ; or out of a wanton expence will be laying out that which might be otherwise usefull to you, for his meere pleasure, the case is different ; For God hath not commanded you to love any man more then your selfe ; and there can be no reason why you should vail your owne just advantage to another mans excessse.

Secondly, upon what termes doe you lend : whether upon an absolute compact for a set increment, (what
ever

ever become of the principall) or upon a friendly trust to a voluntary satisfaction according to the good improvement of the summe lent? The former is not safe, and where there hath beene an honest indeavour of a just benefit disappointed either by unavoidable casualty, or force, may not be rigorously urged, without manifest oppression. The latter can be no other then lawfull: and with those that are truly faithfull and conscionable, the bond of gratitude is no lesse strong then that of law and justice.

Thirdly, if upon an absolute compact; is it upon a certainty, or an adventure? for where you are willing to hazard the principall, there can be no reason but you should expect to take part of the advantage.

Fourthly, where the trade is ordinarily certaine, there are yet farther considerations to be had: to which

shall make way by these undenyable grounds.

That the value of moneys or other commodities is arbitrable according to the soveraigne authority and use of severall Kingdomes and Countries.

That whatsoever commodity is saleable, is capable of a profit in the loane of it; as an horse, or an oxe, being that it may be sold, may be let out for profit.

Money it selfe is not onely the price of all commodities in all civill Nations, but it is also, in some cases, a trafiqueable commodity: the price whereof rises, and falls in severall countries upon occasion; and yeeldeth either profit or losse in the exchange.

There can be no doubt therefore but that money thus considered, and as it were turned merchandise, may be bought and sold, and improved to a just profit.

But

But the maine doubt is, whether money meerely considered as the price of all other commodities, may be let forth for profit; and be capable of a warrantable increase. For the resolving whereof be it determined,

That all usury, which is an absolute contract for the mere loane of money, is unlawfull both by law naturall, and positive, both divine and humane.

Nature teacheth us that metals are not a thing capable of a superfoetation; that no man ought to set a price on that which is not his owne time: that the use of the stock once received, is not the lenders, but the borrowers; for the power, and right of disposing the principall, is by contract transferred for the time to the hands of him that receives it; so as hee that takes the interest by vertue of such transaction, doth but in a man-

nerly and legall fashion rob the borrower.

How frequent the * Scripture is in the prohibition of this practice, no Christian can be ignorant: And as for humane lawes raised even from the mere light of Nature amongst Heathen Nations, how odious, and severely interdicted usury contracts, have been in all times, it appeares sufficiently by the Records which we have of the Decrees of (a) *Egypt*, of *Athens*, of *Rome*; and not onely by the restraint of the Twelve Tables, and of *Claudius* and *Vespasian*; but by the absolute forbiddance of many popular statutes condemning this usage: *Tiberius* himselfe, though otherwise wicked enough, yet would rather furnish the Bankes with his owne stock, to be freely let out for

* Exod. 22. 25. Levit. 25. 36, 37. Deut. 23. 19, 20. Nehem. 5. 7. Psal. 15. 5. Prov. 28. 8. Ezek. 18. 8.
(a) Vid. Alexand. ab Alexand. Gen. dierum l. 1. c. 7.

three yeeres to the Citizens, upon onely security of the summe doubled in the forfeiture, then he would endure this griping & oppressive transaction: And how wise *Cato* drove out all usurers out of *Sicilie*, and *Lucullus* freed all *Asia* from this pressure of Interest, History hath sufficiently recorded.

As for Lawes Ecclesiasticall, let it be enough that a * Councel hath defined, that to say usury is not a sinne, is no better then heresie: and in succeeding times how liable the usurer hath ever been to the highest censures of the Church; and how excluded from the favour of Christian buriall, is more manifest then to need any prooffe.

Secondly, however it is unlawfull to covenant for a certaine profit for the mere loane of money, yet there may be, and are circumstances ap-

* Concil. Viennens.

pending to the loane, which may admit of some benefit to be lawfully made by the lender for the use of his money; and especially these two, the losse that he sustaines, and the gaine that he misses, by the want of the summe lent: For what reason can there be, that to pleasure another man, I should hurt my selfe, that I should enrich another by my owne losse?

If then I shall incur a reall losse or forfeiture by the delayed payment of the summe lent, I may justly look for a satisfaction from the borrower; yea if there be a true danger of losse to me imminent, when the transaction is made, nothing hinders but that I may by compact make sure such a summe as may be sufficient for my indemnity; And if I see an opportunity of an apparent profit that I could make fairly by the disbursing of such a summe *bona fide*, and another

ther that hath a more gainfull bargain in chace shall sue to me to borrow my money out of my hand for his own greater advantage, there can be no reason why in such a case I should have more respect to his profit, then my owne; and why should I not even upon pact, secure unto my selfe such a moderate summe as may be somewhat answerable to the gain which I doe willingly forgoe, for his greater profit? Since it is a true ground which *Lefsius* (with other Casuists) maintains against *Sotus* and *Durand*, that even our hopes of an evident commodity are valuable; and that no lesse then the feares of our losse.

Shortly, for the guidance of our either caution, or liberty in matter of borrowing, and lending, the onely Cynosure is our *Charity*; for in all humane and civill acts of Commerce, it is a sure rule, That what-

ſoever is not a violation of Charity cannot be unlawfull, and whatſoever is not agreeable to Charity can be no other then ſinfull: And as Charity muſt be your rule, ſo your ſelfe muſt be the rule of your Charity; Look what you could wiſh to be done to you by others, doe but the ſame to others, you cannot be guilty of the breach of Charity: The maximes of Traſique are almoſt infinite; onely Charity (but ever inſeparable from Juſtice) muſt make the application of them; That will teach you that every increaſe by loane of money is not uſurarie; and that thoſe which are abſolutely ſuch, are damnable: that will teach you to diſtinguiſh betwixt the one improvement of loane, and the other; and will tell you that if you can find out a way, whether by loane, or ſale, to advance your ſtock, that may be free from all oppreſſion, and extortion; and beneficiall as well

well to others, as to your selfe, you need not feare to walke in it with all honest security: but in the meane time take good heed that your heart beguile you not in mis-applications; for we are naturally too apt out of our self-love to flatter our selves with faire glozes of bad intentions; and rather to draw the rule to us, then our selves to the rule.

But whiles I give you this short solution, I must professe to lament the common ignorance, or mistaking of too many Christians, whose zeal justly cryes downe usury as a most hatefull and abominable practice, but in the meane time makes no bones of actions no lesse biting, and oppressive: they care not how high they sell any of their commodities, at how unreasonable rates they set their grounds, how they circumvent the buyer in their bargaines, and think any price just, any gain lawfull that they can
make

make in their markets : not considering that there is neither lesse, nor lesse odious usury in selling and letting, then there is in lending : It is the extortion in both that makes the sinne ; without which the kind or termes of the transaction could not be guilty. Surely it must needs be a great weaknesse to think that the same God who requires mercy and favour in lending, will allow us to be cruell in selling ; Rigour and excesse in both equally violates the law of commutative Justice, equally crosses the law of Charity : Let those therefore that make scruple of an usurious lending, learn to make no lesse conscience of a racking bargain ; otherwise their partiall obedience will argue a grosse hypocrisie ; and they shal prove themselves the worst kind of what they hate, usurers : For in the ordinary loan-usury, the borrower hath yet time to boot for his money ; but here
the

the buyer payes downe an excessive interest, without any consideration at all, but the sellers crueltie. For the fuller clearing of which point; where-as you aske

CASE II.

Whether may I not sell my wares as deare as I can, and get what I may of every buyer?

I answer;

THere is a due price to be set up-
on every saleable commodity; else there were no commerce to be used among men: For if every man might set what rate he pleases upon his lands or goods, where should he find a buyer? surely nothing could follow but confusion, and want; for mere extremity must both make the market and regulate it.

The due price is that which cuts
equally

equally and indifferently betwixt the buyer and seller; so as the seller may receive a moderate gaine, and the buyer a just penny-worth.

In those countries wherein there is a price set by publique authority upon all marketable commodities, the way of commerce is well expedited, and it is soone and easily determined, that it is meet men should be held close to the rule.

But where all things are left to an arbitrary transaction, there were no living if some limits were not set to the sellers demands.

These limits must be the ordinary received proportion of price current in the severall countries wherein they are sold; and the judgement of discreet, wise, experienced and unconcerned persons; and the well-stated conscience of the seller.

If men shall wilfully run beyond these bounds, taking advantage of the

the rarenesse of the commodity, the paucity or the necessity of the buyers to enhance the price to an unreasonable height, they shall be guilty of the breach of charity, and in making a sinfull bargaine purchase a curse.

Not that a man is so strictly tyed to any others valuation, as that he may not upon any occasion aske or receive more then the common price; or that if the market rise he is bound to sit still: There may be just reason upon a generall mortality of cattle to set those beasts that remaine at an higher rate, or upon a dearth of graine, or other commodities, to heighten the price; but in such cases we must be so affected as that we grudge to our selves our owne gaine, that we be not in the first file of enhancers, that we strive to be the lowest in our valuation, and labour what we may to bring downe the market; alwayes putting our selves in our

conceits into the buyers roome ; and bethinking how we would wish to be dealt with, if we were in his cloathes.

It is lawfull for the seller in his price to have regard not to his rents and disbursements onely, but to his labour, and cost, to his delay of benefit, to his losse in managing, to his hazard or difficulty in conveyance ; but all these in such moderation, as that he may be a just gainer by the bargain : not setting the dice upon the buyer ; not making too much haste to be rich, by the secret spoiles of an oppressed neighbour.

Those things whose end is onely pleasure or ornament, as a Jewell, an Hauke, or an Hound, can admit of no certaine value ; the owners affection must estimate it, and the buyers desire must make up an illimited bargain ; but even in these, and all other commodities that carry the face of unnecessary, Conscience must be the

Clarke

Clarke of the Market; and tell us that we must so sell, as we could be willing to buy. From all which it followes,

That the common maxime current * in the shops of trade, that things are so much worth as they can be sold for; and those ordinary rules of chapmen, that men who are masters of their wares may heighten their prices at pleasure, and get what they can out of all commers; that what ever they can get out of the simplicity, or necessity of the buyers, is lawfull prize, are damnably uncharitable, and unjust.

It were an happy thing, if as it is in some other well ordered nations, there were a certaine regulation of the prices of all commodities by publique authority, the wisdom whereof knowes how to rise and fall accor-

* Dom. Sot. de Justit. & Jure l. 6. quest. 2. Artic. 3. tradit hoc ut Axioma Jurisconsultorum.

ding to the necessity of the occasion; so as the buyer might be secured from injury, and the seller restrained from a lawlesse oppression. But where that cannot be had, it is fit that Justice and Charity should so far overrule mens actions, that every man may not be carried in matter of contract by the sway of his owne unreasonable will, and be free to carve for himselfe as he lists of the buyers purse: every man hath a bird in his bosome that sings to him another note.

A good conscience therefore will tell you that if (taking advantage of the ignorance or unskilfulnesse of the buyer) you have made a prey of him by drawing from him double the worth of the commodity sold, you are bound to make restitution to him accordingly; and in a proportion so, in all the considerable summes which you shall have by your false protestations,

tions, and oathes, and plausible intimations wrought out from an abused buyer; above that due price which would make you a just and rightly moderated gainer: For assure your selfe, all that you willingly doe this way is but a better-coloured picking of purses; and what you thus get is but stolne goods varnisht over with the pretence of a calling, and will prove at the last no other then gravell in your throat.

CASE III.

Whether is the seller bound to make knowne to the buyer the faults of that which he is about to sell?

IT is a question that was long since disputed betwixt the Heathen Sages, *Antipater* and *Diogenes*, as *Cicero* * informes us: with whom *Cato*

* Tull. de Offic. l. 3.

ſo decides it as that his judgement may juſtly ſhame and condemne the practice of too many Chriſtians : For a full answer, due conſideration muſt be had of divers circumſtances.

First, what the nature and quality of the fault is ; whether it be ſleight and unimporting ; or whether ſuch as may vitiate the thing ſold, and render it either unuſefull or dangerous to the buyer : or againe, whether the fault be apparent, or ſecret : both theſe doe juſtly vary the caſe : ſleight and harmles faults may be concealed without injuſtice ; maine and importing muſt be ſignified : if apparent defects be not diſcerned by the buyer, he may thanke himſelfe ; ſecret faults knowne onely to the ſeller, (ſuch as may be prejudiciall to the buyer) ought not to be concealed : or if they be concealed ſo, as that the buyer payes for it as ſound, and perfect, binde the ſeller in conſcience,
either

either to void the bargain, or to give just satisfaction.

Secondly, it would be considered, whether the buyer before the bargain be stricken, hath required of the seller to signifie the faults of the commodity to be sold, and out of a reliance upon the sellers fidelity and warrant, hath made up the match: or whether in the confidence of his owne skill, without moving any question, he enter resolutely, (*de bene esse*) upon the bargained commodity: If the former, a double bond lyes upon the seller to deale faithfully with the buyer, and therefore to let him know the true condition of the thing exposed to sale, that so either he may take off his hand; or if he shall see that notwithstanding that defect it may serve his turne, he may proportion the price accordingly: otherwise he shall be guilty (besides falshood and oppression) of perfidiousnesse.

ousnesse. But if the buyer will peremptorily rely upon his owne judgement, and as presuming to make a gaine of that bargain (which the seller out of conscience of the imperfection, sets (as he ought) so much lower as the defect may be more disadvantageous to the buyer) will goe through with the contract, and stand to all hazards, I see no reason why the seller may not receive the price stipulated; but withall if the match may carry danger in it to the buyer, (as if the horse sold be subject to a perilous starting, or stumbling; the house sold have a secret crack that may threaten ruine; or the land sold be liable to a litigious claime which may be timely avoyded) the seller is bound in conscience (at least after the bargain) to intimate unto the buyer these faulty qualities, that he may accordingly provide for the prevention of the mischief that may ensue.

But

But if the seller shall use art to cover the defects of his commodity, that so he may deceive the buyer in his judgement of the thing bargained for, or shall mix faulty wares with sound, that they may passe undiscovered, he is more faulty then his wares, and makes an ill bargain for his soule. In this, shortly, and in all other cases that concerne trade, these universall rules must take place. That it is not lawfull for a Christian chapman to thrive by fraud. That he may sell upon no other termes then he could wish to buy. That his profit must be regulated by his conscience, not his conscience by his profit. That he is bound either to prevent the buyers wrong ; or if heedlesly done, to satisfy it. That he ought rather to affect to be honest, then rich : And lastly, that as he is a member of a community both civill and Christian, he ought to be tender of another

another mans indemnity no lesse then of his owne.

CASE IV.

Whether may I sell my commodities the dearer for giving dayes of payment?

THERE is no great difference betwixt this case, and that of loane, which is formerly answered; save that there money is let, here commodities money-worth; here is a sale, there a lending; in the one a transferring of the right and command for the time; in the other perpetually: but the substance both of the matter and question is the same; for in both there seems to be a valuation of time: which whether in case of mutuation, or sale, may justly be suspected for unlawfull.

For

For answer ;

There are three stages of prices acknowledged by all Casuists ; the highest, which they are wont to call Rigorous ; the meane, and the lowest ; If these keep within due bounds, though the highest be hard, yet it is not unjust, and if the lowest be favorable, yet it is not alwayes necessary.

If then you shall proportion but a just price to the time, and worth of your bargaine, so as the present shall passe for the easiest price, some short time for the meane, and the longer delay for the highest, I see not wherein, all things considered, you doe offend.

And certainly to debarre the contract of a moderate gaine for the delay of payment upon moneths prefixed, were to destroy all trade of merchandise : For not many buyers are furnished with ready money to

C

buy

buy their wares, at the Port; nor could the ſellers make off their commodities ſo ſeaſonably, as to be ready for further trafique, if they muſt neceſſarily be tyed to wait upon the hopes of a pecuniary ſale; and not left to the common liberty of putting them over to whole-ſale men upon truſt; who upon a ſecond truſt diſtribute them to thoſe, that vent them by retaile, both for days agreed upon: By which meanes the trade holds up, and the common-wealth enjoyes the benefit of a convenient and neceſſary commerce.

A practice that is now ſo habituated amongſt all nations into the courſe of trade, that it cannot well conſiſt without it: So as nothing is more ordinary in experience then that thoſe who are able to pay downe ready money for their wares, know to expect a better pennyworth, then thoſe that runne upon truſt: And
— there

there may be just reason for this difference ; For the present money received enables the seller to a further improvement of his stock, which lyes for the time dead in the hands that take day for their payment.

So then, it is not mere time that is here set to sale, which were odious in any Christian to bargain for ; but there are two incidents into this practice which may render it not unwarrantable. The one is the hazard of the summe agreed upon : which too often comes short in the payment : whiles those subordinate chapmen into whose hands the grosse summe is scattered, turne bankrupts, and forfeit their trust ; so as no small losse is this way commonly sustained by the confident seller ; in which regard we are wont to say justly, that One bird in the hand is worth two in the wood. The other is the cessation of that gaine which the merchant might

in the meane time have made of the ſum differred ; which might in likelihood have beene greater then the proportion of the raiſed price can amount unto ; to which may be added the foreſeene probability of the raiſing of the market in the intervall of payment : the profit whereof is precluded by this meanes to the ſeller ; whoſe full ingagement takes him off perhaps from a reſolution to have reſerved thoſe commodities in his own hands in expectation of an opportunity of a more profitable utterance, had not the forwardneſſe of the buyer importuned a prevention.

Upon theſe conſiderations, if they be ſerious, and unfained ; I ſee not why you may not in a due and moderate proportion, difference your prices according to the delayes of payment, without any oppreſſion to the buyer : Howbeit, if any man pleaſeth to be ſo free, as to take no
notice

notice of time, but to make future dayes in his account, present, I shall commend his charity, though I dare not presse his example as necessary.

The case is equally just on the behalfe of the seller: who if he be either driven by some emergent necessity; or drawne by the opportunity of a more gainfull bargaine, to call for his money before his day, may justly be required by the late buyer, to abate of the returnable summe, in regard of the prevention of the time covenanted; by reason of the inconvenience or losse whereunto he is put upon the suddaine revocation of that money, which is not by agreement payable till the expiration of the time prefixed. But what quantity is to be allowed on the one part, or defalked on the other, is onely to be moderated by Christian Charity, and that universall rule of doing what we would be willing to suffer.

CASE V.

*Whether, and how farre, Monopolies
are, or may be lawfull.*

THe most famous Monopolie that we finde in history is that of *Egypt*, Gen. 41. 56, 57. wherein the provident Patriarch *Joseph*, out of the fore-sight of a following dearth, bought up the seven yeares graine for *Pharaoh*, and layd it up in publique store-houses; and in the generall scarcity sold it out to the inhabitants, and strangers, with no small advantage; which was so farre from unlawfull, as that he thereby merited the name of the Saviour of *Egypt*: * and if any worthy Patriot out of a like providence, shall before-hand gather up the commodities of his country into a publique Magazine

* So the Vulgar renders *Zaphnath-paaneah* Salvator mundi, Gen. 41. 45.

for the common benefit and reliefe of the people, upon the pinch of an ensuing necessity, he is so farre out of the reach of censure, as that he well deserves a statue with the Inscription of Publique Benefactor; So as it is not the mere act of Monopolizing that makes the thing unlawfull, but the ground and intention, and the manner of carriage.

All Monopolies, as they are usually practised, are either such as are allowed by Sovereaign authority, or privately contrived by secret plot and convention for a peculiar gaine to some speciall persons. If the first, it must be considered upon what reason that priviledge is granted, and upon what termes; If both these be just, the grant can be no other. For first, it may not be denyed, that supreme authority, whether of Princes or States, hath power to grant such priviledges where they shall find just

cause ; and secondly, that there may be very just motives of granting them to some capable and worthy persons ; I should be a shamed to imagine that either of these should need any probation.

Doubtlesse then, there is manifest equity that where there hath beene some great merit, or charge, or danger in the compassing of some notable worke for a common good, the undertaker should be rewarded with a patent of a secured profit to himselfe. As put case some wel-minded Printer (as one of the *Stephens*) is willing to be at an excessive charge in the faire publication of a learned and usefull worke for the benefit of the present and following ages ; it is most just that he should from the hands of Princes or States receive a Priviledge for the sole impressiion ; that he may recover, with advantage, the deep expence he hath beene at ;
Other-

Otherwise some Interloper may perhaps underhand fall upon the work at a lower rate, and undoe the first editor ; whose industry , care and cost shall thus be recompenced with the ruine of himselfe and his posterity ; as were too easie to instance.

If a man have by notable dexterity of wit, and art ; and much labour and charge after many experiments, atained to the skill of making some rare engine of excellent use for the service of his Prince and Countrey, as some singular water worke ; or some beneficiall instrument for the freeing of navigable rivers from their sandy obstructions, it is all the reason in the world, that by the just bounty of Princes he should be so farre remunerated as that he alone may receive a patent of enjoying a due profit of his owne invention.

But how farre it may be lawfull for a Prince not onely to gratifie a

well-deserving Subject, with the fee of his owne devise, but with a profit arising from the sole sale of marketable commodities through his Kingdome; or whether, and how farre in the want of monies for the necessary service of his State, he may for the publique use, raise, set, or sell monopolies of that kind, is diversly agitated by Casuists; and must receive answer according to the absolute-nesse or limitation of those Governments, under which they are practised: But with this, that where this is done, there may be great care had of a just price to be set upon the commodities so restrained, that they be not left to the lawlesse will of a privileged engrosser, nor heightened to an undue rate by reason of a particular indulgence.

This may be enough for authoritative Monopolies. The common sort of offensive practices this way are

are private and single, or conventionall, and plotted by combination ; The former , as when some covetous extortioner out of the strength of his purse buyes up the whole lading of the ship, that he may have the sole power of the wares to sell them at pleasure, which, there is no feare but he will doe with rigour enough : The true judgment of which action, & the degrees of the malignity of it, must be fetcht, as from the mind, so from the management of the buyer ; as being so much more sinfull, as it partakes more of oppression. The latter, when some brethren in evill conspire to prevent the harvest, to buy up, or hoord up the graine ; with a purpose to starve the market, and to hatch up a dearth : A damnable practice in both kinds ; and that which hath of old beene branded with a curse ; neither lesse full of injustice then uncharitableness ; and that which cries aloud,

aloud, for a just punishment, and satisfactory restitution.

I cannot therefore but marvaile at the opinion of learned *Lessius* (which he fathers also upon *Molina*) that too favourably minces the hainousnesse of this sin; bearing us in hand that it is indeed an offence against charity, and common profit, but not against particular Justice. His reason: To buy that corne (saith he) could not be against justice, for he bought it at the current price: Nor yet to sell it, could be against justice, because he was not tyed out of justice at that time to bring it forth to sale: When he might easily have considered, that it is not the mere act of buying, or of not selling, that in it selfe is accused for unjust, but to buy, or not to sell, with an intention, and issue of oppressing others, and undue enriching themselves by a dearth. For what can be more unjust then for a man to
indevor

indeavor to raise himselfe by the affa-
mishing of others :

Neither can it serve his turne to say,
by way of excuse, that the multitude
of buyers may be the cause of a
dearth, and yet without sin ; since
they doe rather occasion, then cause
a scarcity ; and are so farre from in-
tending a dearth in making their mar-
ket, that they deprecate it, as their
great affliction.

And if, by his owne confession,
those who either by force, or fraud
hinder the importation of corne, that
a dearth may continue, are guilty of
injustice, and are bound to make re-
stitution both to the Commonwealth
in giving cause to raise the price ; as
also to the Merchant, whom they
have hindered, of his meet gaine ;
how can those be liable to a lesse sin,
or punishment, that either buy up,
or wilfully keep in, their graine with
a purpose to begin, and hold on a
dearth ?

dearth? and what lesse can it be then force or fraud, that by their crafty and cruel prevention the poor are necessitated to want that sustenance, whereby their life should be maintained?

Wise Solomon shall shut up this Scene for me. *He that with-holds corne, the People shall curse him, but blessings shall be upon the head of him that selleth it. Prov. 11. 26.*

CASE VI.

Whether, and how farre doth a fraudulent bargaine bind me to performance?

HOW far in matter of law, you must advise with other Counsaile, but for matter of conscience, take this:

Is the fraud actively yours, done by you to another? or else passively put by

by another upon you ? If the former, you are bound to repent and satisfie ; either by recinding the match, or by making amends for the injury : If the latter ; wherein did the fraud lye ? If in the maine substance of the thing sold, the bargain is both by the very law of nature, and in conscience, void ; yea indeed, none at all : as if a man have sold you copper lace for gold ; or alchymie-plate for silver ; the reason is well given by * Casuists: There is no bargain without a consent ; and here is no consent at all, whiles both parties pitch not upon the same subject ; the buyer propounds to himselfe gold and silver, the seller obtrudes copper, and Alchymie ; the one therefore not buying what the other pretended to sell, here is no bargain made, but a mere act of cozenage, justly liable to punishment by all lawes of God and

* Lessius l. 2. c. 17. dub. 5.

man. But if the fraud were onely in some circumstances; as in some faulty condition of the thing sold not before discerned; or in the overprizing of the commoditie bought; the old rule is, *Caveat emptor*; You must (for ought I know) hold you to your bargain; but if that faulty condition be of so high a nature that it marres the commoditie, and makes it uselesse to the buyer, the seller (being conscious of the fault) is injurious in the transaction, and is bound in conscience to make satisfaction; and if he have willingly over-reacht you in the price, in a considerable proportion is guilty of oppression.

It is very memorable in this kinde that *Cicero* relates to us of a fraudulent bargaine betwixt * *Canius*, a Roman Knight and Orator, and one *Pythius* a Banker of *Syracuse*. *Canius* comming upon occasion of pleading

* *Cicero* de Offic. l. 3. Sect. 58.

to the city of *Syracuse*, tooke a great liking to the place; and settling there, gave out that he had a great desire to buy some one of those pleasant gardens, wherewith, it seems, that city abounded; that he might there recreate himselfe when he pleased, with his friends.

Pythius a crafty merchant hearing of it, sends word to *Canius*, that he had a fair garden which he had no minde to sell; but if he pleased to make use of it for his solace, he might command it as his owne; and withall courteously invites *Canius* to sup with him there the day following: In the meane time being a man by reason of his trade of exchange, very gracious in the city, he calls the fishermen together, and desires them that the next evening they would fish in the stream before his garden, and bring him, what they shall have caught; *Canius* in due time comes according

according to the invitation, to supper ; where there was delicate provision made for him by *Pythius* ; and store of boats bringing in their plentiful draughts of fish, and casting them downe at the feet of *Pythius* : *Canius* asks the meaning of this concourse of Fishermen, and store of proffered provision ? *Pythius* tells him this is the commodity and priviledge of the place, if *Syracuse* yeeld any fish, here it is caught, and here rendered ; *Canius* beleeving the report, importunes his host to sell him the ground : the owner after some seeming loathnesse, and squeamish reluctance, at last yeelds to gratifie him with the bargaine : The deare price is payd downe with much eagernesse. The new master of the place, in much pride of his purchase, the next day repaires early to his garden, invites his friends to a friday feast ; and finding no boat there, asks the neighbour

bour whether it were holiday with the fishermen, that he saw none of them there; No, said the good man, none that I know; but none of the trade use to fish here; and I much marvelled at the strange confluence of their boats here yesterday: The Roman Orator was downe in the mouth; finding himselfe thus cheated by the money-changer: but, for ought I see, had his amends in his hands; He meant, and desired to buy the place, though without any such accommodation; but over-bought it upon the false pretence of an appendent commodity; the injury was the sellers, the losse must be the buyers.

But if such be the case, that you are meerly drawne in by the fraud, and would not have bought the commodity at all, if you had not beene induced by the deceit, and false oathes and warrants of the seller, you have

have juſt reaſon, either, if you may, to fall off from the bargain; or, if the matter be valuable, to require a juſt ſatisfaction from the ſeller; who is bound in conſcience either by annulling the bargain, or abatement of price to make good your indemnity.

In theſe matters of contract there is great reaſon to diſtinguiſh betwixt a willing deceit, and an involuntary wrong; If a man ſhall fraudulently ſell an horſe which he knowes ſecretly and incurably diſeaſed, to another for ſound; and that other, beleeving the ſellers deep proteſtation, ſhall upon the ſame price, *bonâ fide*, put him off to me; I feel my ſelf injured, but whither ſhall I go for an amends? I cannot challenge the immediate ſeller, for he deceived me not; I cannot challenge the deceiver, for he dealt not with me; In humane lawes, I am left remedileſſe, but in the law of
con-

conscience, the first seller, who ought to have born his own burthen of an inevitable losse, is bound to transferre by the hands that sold me that injurious bargaine, a due satisfaction.

Neither is it other of fraudulent conveyances in the houses or land, how ever the matter may be intricated by passing through many perhaps unknowing hands, yet the sinne and obligation to satisfaction, will necessarily lie at the first door; whence if just restitution doe not follow, the seller may purchase Hell to boot.

Think not now on this discourse that the onely fraud is in selling; there may be no lesse (though not so frequent) fraud in buying also; whether in unjust payment, by false coyne; or by injustice of quantities, as in buying by weights, or measures above allowance; or by wrong valuation of the substance & quality of the
com-

commodity, miſknown by the ſeller; As for inſtance, A ſimple man, as I have known it done in the Weſterne parts, findes a parcell of Ambergris caſt upon the ſands; he perceiving it to be ſome unctuous matter, puts it to the baſe uſe of his ſhoes, or his cart wheel; a merchant that ſmells the worth of the ſtuffe buyes it of him for a ſmall ſumme; giving him a ſhilling or two, for that which himſelfe knowes to be worth twenty pounds: the bargaine is fraudulent; and requires a proportionable compenſation to the ignorant ſeller, into whoſe hands providence hath caſt ſo rich a booty.

Shortly, in all theſe intercourſes of trade, that old and juſt rule which had wont to ſway the trafique of heathens, muſt much more take place amongſt Chriſtians, (*cum bonis bene agier*) that honeſt men muſt be honeſtly dealt with: and therefore

fore that all fraud must be banished out of their markets ; or, if it dares to intrude, soundly punished ; and mulcted with a due satisfaction.

CASE VII.

How far, and when am I bound to make restitution of another mans goods remaining in my hands ?

Restitution is a duty no lesse necessary, then rarely practised amongst Christians. The Arch-publican *Zachens* knew that with this he must begin his conversion ; and that known rule of Saint *Austen* * is in every mans mouth, No remission without restitution. For this act is no small piece of commutative Justice ; which requires that every man should have his owne : Most just therefore it is, that what you have taken, or

* Aug. epist. 54. ad Macedon.

detained

detained from the true owner should be restored ; neither can it be sufficient, that you have conceived a drye and bootlesse sorrow for your wrongfull detention, unlesse you also make amends to him by a reall compensation.

But you are disabled to make restitution by reason of want, your will is good, but the necessity into which you are fallen, makes you incapable of performance : See first, that it be a true, and not fained necessity ; Many a one, like to leud cripples that pretend false soares, counterfeite a need that is not, and shelter themselves in a willing Jaile, there living merrily upon their defrauded creditor, whom they might honestly satisfie by a well improved libertie : This case is damnably unjust ; but if it be a true necessity of Gods making, it must excuse you for the time ; till the same hand that did
banish
cast

cast you downe, shall be pleased to raise you up againe; then, you are bound to satisfie; and in the meane time, lay the case truly before your creditor, who if he be not mercilesse, where he sees a reall desire, and indvour of satisfaction, will imitate his God in accepting the will for the deed: and wait patiently for the recovery of your estate.

You ask now, to whom you should tender restitution?

To whom, but the owner? But he, you say, is dead; That will not excuse you; he lives still in his heires; It is memorable (though in a small matter) which *Seneca* reports of a Pythagorean Philosopher at *Athens*, who having run upon the score for his shoos at a shop there; hearing that the shoemaker was dead, at first was glad to think the debt was now paid; but straight recollecting himselfe, he sayes within himself; Yet, howso-

D

ever,

ever, the shoemaker lives still to thee, though dead to others; and there-upon puts his money into the shop, as supposing that both of them would find an owner. It is a rare case that a man dies, and leaves no body in whom his right survives: But if there be neither heire, nor executor, nor administrator, nor assigne; the poor (saith our Saviour) ye shall have alwayes with you; Make thou them his heire: Turne your debt into almes.

Obj. But alas you say; I am poor my self, what need I then look forth for any other? Why may not I employ my restitution to the reliefe of my owne necessity?

Sol. It is dangerous, and cannot be just for a man to be his owne carver altogether in a business of this nature; You must look upon this money, as no more yours then a strangers; and howsoever it be most true that every
man

man is nearest to himselfe, and hath reason to wish to be a sharer, where the need is equall; yet it is fit this should be done with the knowledge and approbation of others: Your Pastor, and those other that are by authority interessed in these publique cares, are fit to be acquainted with the case; (if it be in a matter meet to be notified) as a businesse of debt or pecuniary ingagement let their wisdom proportion the distribution; But if it be in the case of some secret crime, as of theft, or cozenage, which you would keep as close as your own heart, the restitution must be charged upon your conscience to be made with so much more impartiality, as you desire it more to be concealed; Herein have a care of your soul, what ever becomes of your estate.

As for the time of restitution it is easily determined, that it cannot

well be too soone for the discharge of your conscience, it may be too late for the occasions of him to whom it is due ; Although it may fall out that it may prove more fit to deferre for the good of both : wherein charity and justice must be called in as arbitrators ; The owner calls for his money in a riotous humour to mispend it upon his unlawfull pleasure ; if your delay may prevent the mischief, the forbearance is an act of mercy : The owner calls for a sword deposited with you, which you have cause to suspect he meanes to make use of, for some ill purpose ; your forbearing to restore it is so both charitable and just, that your act of delivery of it may make you accessary to a murther. Whereto I may adde, that in the choice of the time, you may lawfully have some respect to your selfe ; for if the present restitution should be to your utter undoing,
which

which may be avoided by some reasonable delay, you have no reason to shun anothers inconvenience by your own inevitable ruine; in such case let the creditor be acquainted with the necessity, his offence deprecated; and rather put your selfe upon the mercy of a Chancery, then be guilty of your owne overthrow.

But when the power is in your hand, and the coast every way clear, let not anothers mans goods or money stick to your fingers; and think not that your head can long lye easily upon anothers mans pillow.

Yea, but you say the money or goods mis-carried, either by robbery or false trust, ere you could employ them to any profit at all; This will not excuse you; after they came into your power, you are responsible for them; What compassion this may work in the good nature of the owner for the favour of an abate-

ment, muſt be left to his own breaſt; your tye to reſtitution is not the leſſe; For it is ſuppoſed, had they remained in the owners hands they had been ſafe; if it were not your fault, yet it was your croſſe, that they miſcarried; and who ſhould bear your croſſe but your ſelf?

Shortly then, after all pretences of excuſe; the charge of wiſe Solomon muſt be obeyed: *With-hold not good from the owners thereof, when it is in the power of thine hand to doe it,* Prov. 3. 17.

CASE VIII.

Whether, and how farre doth a promiſe extorted by fear, though ſeconded by an oath, bind my conſcience to performance?

A Mere promiſe is an honeſt mans ſtrong obligation; but if it be
withall

withal backed with an oath, the bond is sacred, and inviolable.

But let me ask you what promise it is that you thus made, and bound ; If it be of a thing unlawfull to be done, your promise and oath is so farre from binding you to performance, that it binds you onely to repentance that ever you made it ; In this case your performancee would double and heighten your sin : It was ill to promise, but it would be worse to performe : *Herod* is by oath ingaged for an indefinite favour to *Salome* ; She pitches upon *John Baptist's* head ; He was sory for such a choice, yet for his oaths sake he thinkes he must make it good : Surely, *Herod* was ill-principled, that he could think a rash oath must bind him to murder an innocent ; He might have truly said, this was more then he could doe ; for that we can doe, which we can lawfully doe.

But if it be a lawfull thing that you have thus promised , and sworne ; though the promise were unlawfully drawn from you by feare, I dare not perswade you to violate it. It is true that divers learned Casuists hold , that a promise drawne from a man by feare is void, or at least revocable at pleasure ; and so also the oath annexed, which followes the nature of the act whereto it appends ; chiefly upon this ground ; that both these are done without consent, mere involuntary acts , since nothing can be so contrary to consent as force and feare : But I dare not goe along with them ; for that I apprehend there is not an absolute involuntarinesse in this ingagement, but a mixt one ; such as the * Philosopher determines in the Mariner, that casts his goods over board to save his life ; in it selfe, he hath no will to doe it ; but here

* Arist. Eth. l. 3. c. 2.

and now upon this danger imminent, he hath an halfe-will to performe it.

Secondly, I build upon their owne ground; There is the same reason, they say, of force, and of fraud; now that a promise and oath drawne from us by fraud bindes strongly, we need no other instance then that of *Joshua* made to the *Gibeonites*; there could not be a greater fraud then lay hid in the old shooes, thred-bare garments, rent bottles, and mouldy provisions of those borderers; who under the pretence of a remote nation put themselves under the interest and protection of *Israel*: *Josh. 9. 12, 13.* &c. the guile soone proved apparent, yet durst not *Joshua*, though he found himselfe cheated into this covenant, fall off from the league made with them; which when, after many ages, *Saul* out of politique ends went about to have broken, we see how fearfully it was avenged with a grievous

plague of famine upon *Israel*, even in *David's* dayes, 2 *Sam.* 21. 1. who was no way accessary to the oppression; neither could be otherwise expiated then by the bleeding of *Saul's* bloody house. When once we have interested God in the businesse, it is dangerous not to be punctuall in the performance. If therefore a bold theefe taking you at an advantage have set his dagger to your brest, and with big oathes threatned to stab you unlesse you promise and sweare to give him an hundred pounds to be left on such a day in such a place for him, I see not how (if you be able) you can dispence with the performance; the onely help is, (which is well suggested by * *Lessius*) that nothing hinders why you may not, when you have done, call for it back againe, as unjustly extorted. And truly, we are beholden to the Jesuite for so much

* *Lessius de Jure*, &c. l. 2. C. 42. dub. 6.

of a reall equivocation ; why should you not thus right your selfe, since you have onely tyed your selfe to a mere payment of the summe ? upon staking it downe for him, you are free. But if he have forc'd you to promise, and swear not to make him knowne, you are bound to be silent in this act, concerning your selfe ; but withall, if you find that your silence may be prejudiciall to the publique good, for that you perceive the licentiousnesse of the offender proceeds (and is like so to doe) to the like mischief unto others, you ought, though not to accuse him for the fact done unto you ; yet to give warning to some in authority to have a vigilant eye upon so leud a person, for the prevention of any further villany.

But if it be in a businesse, whose perill rests onely in your selfe, the matter being lawfull to be done ;
your

your promise and oath (though forced from you) must hold you close to performance, notwithstanding the inconveniences that attend. If therefore you are dismissed upon your Parole, for a certaine time, to returne home, and dispose of your affaires, and then to yeeld your selfe againe prisoner to an enemy; the obligation is so strict and firme, that no private respects may take it off: and it should be a just shame to you that a * Pagan should out of common honesty hold himselfe bound to his word, (not without the danger of torment and death) when you that are a Christian slip away from your oath.

* *Attilius Regulus.*

CASE

CASE IV.

Whether those moneys or goods which I have found, may be safely taken and kept by me to my owne use.

IT is well distinguished by *Sotus* out of *Aquinas* *, that those things which may be found, are either such as call no man master, as some pearl, or precious stone, or Ambergris lying upon the shore; or such as have an owner, but unknown to us, or (as we may adde, to make up the number compleat) such as whose owner we know. Where the true owner is knowne, speedy restitution must follow; otherwise the detention is in the next door to theft; Where the commodity found hath no owner, it justly falls to the right of the first finder; for both the place and the thing are masterlesse, (*adefpota*) and common;

* Dom. Sot. de Jure et Justit. l. 5. q. 3. pag. 436.

offering themselves to the next com-
mer : The onely difficulty is in
those things which have an unknown
owner : And certainly common
justice and honesty suggests to us, that
we may not seize on commodities
of this kinde, as absolutely our own ;
the casualty of their mis-laying doth
not alter their propriety ; they are
still his that lost them ; though out of
his sight, yet not out of his right ;
and even naturall Justice, would give
every man his owne. The Lawes
both Civill and Canon, and Muni-
cipall doe sufficiently guide our
practise in many particular cases of
this nature, and our Conscience must
lead us to follow them : If they be
quick commodities, as horses, sheep,
kine, and the like, (which we call
Waives and Strayes) every one
knowes they are to be publicquely im-
pounded, that upon search the owner
may be the surer to find them ; and if
he

he come not in, the sooner, to be openly cryed in severall markets, that the noise of his own neglected goods may come to his care: and if, upon a continuing silence, they be put into the Custody of the Lord of the Manour, (who is most likely to be responsible) and he shall make use of them, before his year and day be expired, he shall not doe it without some mark of distinction, that yet the true owner may know, they are not challenged by the present possessor, as his owne, but lye open to the just claime of their true master.

But if they be dead commodities, as a jewell, a purse, or some ring of price, or the like, the finder may not presently smother up the propriety of it in his owne cofer; his heart tells him that the meer accident of his finding it, cannot alienate the just right of it from the true owner; he is therefore bound in conscience, in an
honest

honest sincerity to use all good means for the finding out of the right proprietary, whether by secret inquiry, or open publication : and if after due inquisition, no claime shall be made to it for the present, he shall reserve it in his hand in expectation of a just challenge : upon the assurance whereof (how late soever) he is bound to restore it to the proper owner : who, on the other side, shall faile in his duty of gratitude, if he returne not some meet acknowledgment of that good office, and fidelity : In all which mutuall carriages, we ought to be guided by those respects which we could wish tendered to our selves in the like occasions. Mean while, in all the time of our custody, we are to looke upon those commodities as strangers ; making account of such a potentiall right onely in them, as we are ready and desirous to resigne to the hands that purchased and lost them. On the

the contrary, no words can expresse the horrible cruelty and injustice that is wont to be done in this kinde, not onely on our shores, but in other nations also, upon the ship-wracked goods both of strangers, and our own compatriots; whiles in stead of compassioning and relieving the losse, and miseries of our distressed brethren, every man is ready to run upon the spoile, and, as if it were from some plundered enemy, is eagerly busie in carrying away what riches soever come to hand, which they falsly, and injuriously term *Gods Grace*, when as indeed it is no other then the Devils booty. This practice can passe for no other then a meere robbery, so much more haynous, as the condition of the mis-carried owner is more miserable: What a foul inhumanity is this, to persecute him whom God hath smitten; and upon no other quarrell to be cruell to our brother, then
because

because the Sea hath been mercileſſe :
 Deare countrymen, ye eſpecially of
 the Weſt, leave theſe abominable pil-
 lages to ſavage Nations, that know
 not God ; and, putting on the bow-
 ells of tender compaſſion, lend your
 beſt ſuccour rather for the reſcue of
 poore wracked ſoules, and ſafely pre-
 ſerving that ſmall reſidue of their
 drowned freight, which you cannot
 imagine that the Sea hath therefore
 forborne to ſwallow, that you might.

CASE X.

*Whether I may lawfully buy thoſe goods
 which I ſhall ſtrongly ſuſpect, or know
 to be ſtolen or plundered ; or, if I have
 ignorantly bought ſuch goods, whe-
 ther I may lawfully (after knowledge
 of their owner) keep them as mine.*

TO buy thoſe goods which you
 know, or have juſt cauſe to ſu-
 ſpect

spect to be stoln or plundered, is no better then to make your selfe accessory to the theft; if you doe it with an intention to possesse them as your owne; for what doe you else herein, but *ex-post-facto* partake with that theefe, who stole them; and encourage him in his leud practices: since according to the old word; If there were no receivers, there would be no theeves. Neither will it serve the turn, that in the case of plunder, there may seeme a pretence of justice, in that this is pleaded perhaps to be done by some colour of authority; for certainly where there is not law, there can be no justice, whereof law is the onely rule: Whatever then is against an established Law, in matter of right and possession, can be no other then unjust; Take heed therefore lest that heavy challenge of the Almighty be (upon this bargaine) charged upon you; Psal. 50. 18. *When thou sawest*

a theefe, thou consentedst with him :
These stoln waters may be sweet in the mouth, but they will be poyson in the maw, and like the water of a just jealousie, rottennesse to the belly : But if (as these ill-gotten goods are lightly cheap penny-worths) you buy them onely with an intention to gratifie the true owner, with an easie purchase of his owne, (which would perhaps else be unrecoverable)(whiles your profession it doe it for no other end takes off the scandall) I cannot but allow your act, and commend your charity.

But if, making use of that rule which Saint *Paul* gives for meat, in bargaining for any other commodities, you shall extend your liberty to whatsoever is sold in the market, and shall in the exercise of that freedome upon a just and valuable consideration ignorantly buy those goods which you afterward heare, and know, to be

be anothers, the contract is on your part valid, and faultlesse, since your invincible want of knowledge acquits you from any guilt of consent; but withall, there is an after-game to be plaid by you: you are bound (upon just notice) to acquaint the true owner with the matter, and to profer your selfe ready to joine with him in the prosecution of law, or justice upon the offender, and upon a meet satisfaction to tender him his owne.

But if the theft be onely upon probability; and it be doubtfull whether the goods belong to the owner notified to you, your duty is to make diligent inquiry into the businesse; and if upon due inquisition, you find too much likelihood of the theft, I dare not advise you (with some Casuists) to reverse the bargaine, and to returne the commodity to those false hands that purloyned it; but rather to call the probable owner, and with him

him to appeale unto just authority,
for a more full examination of the
right, and an award answerable to
justice: but if there appeare no good
grounds for an impeachment, you
may peaceably sit downe in the pos-
session, till further evidence may con-
vince your judgment in the con-
trary.

RESO.



RESOLUTIONS.

The second Decade.

Cases of Life and Liberty.

CASE I.

Whether, and in what cases it may be lawfull for a man to take away the life of another.



How light a matter so-
ever it may seem to
the world now long
soaked in blood, a
mans life is most pre-
cious; and may not (but upon the
waightiest of all causes) be either ta-
ken, or given away. The great God
hath

hath reserved to himselfe this prerogative, to be the onely absolute Lord of it ; neither can any creature have power to command it, but those onely to whom he hath committed it by speciall deputation ; nor they neither, by any independent or illimited authority ; but according as it is regulated by just lawes : to call for a mans life merely out of will, is no other then a Turkish tyranny.

Now the same God that hath ordained Sovereaigne powers to judge of, and protect the life of others, hath given weighty charge to every man to tender and manage his owne : which binds him to use all just means for his owne preservation ; although it should be the necessitated destruction of another.

Let us see therefore how far and in what cases, man, that is alwayes appointed to be master of his owne life, may be also master of another mans.

That

That publique justice may take away the life of heinous malefactors, is sufficiently knowne, to be not lawfull only, but required; and indeed so necessary, that without it there were no living at all amongst men.

That in a just warre the life of an open enemy may be taken away, is no lesse evident; the onely question is of private men in their owne cases.

And here we need not doubt to say that even a private man, being mortally assaulted, may in his owne defence lawfully kill another; I suppose the assault mortall, when both the weapon is deadly, and the fury of the assailant threatens death; as for some sleight and suddaine passages of a Twie, or a cane, they come not under this consideration; although these small affronts offered to eminent persons prove oftentimes to be quarrells no lesse then mortall. But

even in theſe assaults, (except the violence be ſo too impetuous, that it will admit of neither parle nor pause) there ought to be (ſo much as may conſiſt with our neceſſary ſafety) a tender regard and indevor to avoid the ſpilling of blood; but if neither perſwaſion, nor the ſhifting (what we may) our ſtation, can abate any thing of the rage of the aſſailer, death muſt: Yea, if not my brother onely, but my father, or my ſonne ſhould in this forcible manner ſet upon mee, howſoever I ſhould hazard the award of ſome blowes, and with teares beg a forbearance, yet if there would be no remedy, nature muſt pardon me, no man can be ſo neare me as my ſelfe.

I cannot therefore ſubſcribe to the counſell of * *Leonardus Leſſius* (abetting ſome ancient Caſuiſts, and pro-

* *Leſ. de iur. &c. l. 2. c. 9. dubit. 6. Ex Antonio Sylveſtr. &c.*

tended

tended to be countenanced by some Fathers) that it were meet for Clericall and Religious persons rather to suffer death then to kill a murtherer: since no reason can be shewed, why their life should not be as deare to them as others; or why they should be exempted from the common law of nature; or why their sacred hands should be more stained with the foule blood of a wicked man-slayer, justly shed, then any others. I am sure *Phineas* thought not so; nor *Samuel* after him; and (which is most of all) that the honor and priviledges of the sonnes of *Levi* were both procured, and scoffed on them upon an enjoyned blood-shed.

* Onely here is the favour and mercy of that learned Casuist, that Clerks and Votaries are not alwayes bound rather to dye, then kil: for, saith he, if such religious person should bethink

* Ibid. paragr. ult.

himselfe, that he is in a deadly sin, and should thereupon feare that he should be damned, if he were killed in that wofull and desperate estate; he were then bound by all meanes to defend himselfe, and to preferre the safety of his owne soule, before the life of another: As if nothing but the feare of damnation could warrant a man for his owne safeguard; as if nothing but the danger of hell could authorize an holy person to be his owne guardian; as if the best of lives were so cheape and worthlesse, that they might be given away for nothing: whereas contrarily *Precious in the sight of the Lord is the death of all his Saints.* Psal. 116. But in such a case (according to the opinion of this great *Casuist*) charity to our selves doth not more arme and enforce our hand, then charity to our neighbour holds it, and binds it up: We may

* Less ibid. d. 1 *

not

not kill lest the man-slayer dying in the attempt of this murder, should everlastingly perish: Surely, I cannot but admire this unreasonable mercy in a father of the Society; Where was this consideration when so many thousands of innocent persons were doomed to be blowne up in a state of impenitence, whose unrepented heresie must needs have sent them up instantly to their hell?

By this reason, a malefactor if he be obdured in his sin, and professeth to be remorselesse, may not feel the stroke of Justice. Shortly then, if a man will needs be wicked to my destruction, the evill is his owne, let him beare his owne guilt, let me looke to my owne indemnity.

The case is yet more difficult where the attempt is not upon my person, but my goods; if a man will be offering to robbe my house, or to take my purse, what may I doe in this

caſe: Surely, neither charity, nor juſtice can diſſwade me from reſiſting; the lawes of God and man will allow me to defend my owne; and if in this reſiſtance the theefe, or Burglayer miſcarry, his blood will be upon his owne head: although in the meane time, charity forbids that this ſlaughter ſhould be firſt in my intention; which is primarily bent upon my owne ſafety, and the vindication of my owne juſt propriety: the blood that followes is but the unwilling attendant of my defence: of the ſhedding whereof, God is ſo tender, that he ordained it onely to be inoffenſively done in a nightly robbery; *Exod.* 22. 2. where the purpoſe of the theefe is likely to be more murderous, and the act more uncapable of reſtitution.

What then if the theefe, after his robbery done, ceaſing any further danger of violence, ſhall betake himſelfe

selfe to his heeles, and run away with my money? In such a case, if the summe be so considerable, as that it much imports my estate, how ever our Municipall lawes may censure it (with which, of old, even as killing (** se defendendo*) was no lesse then felony of death) my conscience should not strike me if I pursue him with all might, and in hot chase so strike him, as that by this meanes I disable him from a further escape, for the recovery of my owne; and if hereupon his death shall follow, how ever I should passe with men, God and my owne heart would acquit me.

Neither doubt I to say the like may be done upon a forcible attempt of the violation of the Chastity of either sexe: A case long agoe adjudged by the doome of nature it selfe in *Marinus* the Generall of the Roman

** Dalton p. 244.*

army (as * *Cicero* tells us) clearly acquitting a young man for killing a Colonel that would have forced him in this kind.

But I may not assent to † *Dominicus Bannez*, † *Retius Narayrus*, and † *Cajetan*, (though grave authors) who hold, that if a man goe about upon false and deadly criminations to suborne witnesses against mee, to accuse me to a corrupted Judge, with a purpose to take away my life, in a colour of justice, if I have no other way to avoid the malice, I may lawfully kill him: It were a wofull and dangerous case, if every man might be allowed to crave himselfe of justice; Mere accusations are no convictions; How know I what God may worke for me on the Bench, or at the barre to what evidence he may raise to cleer mee? what confusion, or contradiction he

* *Orat. pro. Mil.* † *Bann. q. 64. 2. 7. dub. 9.* *Navar. l. 2. c. 3.* *Lessius l. 2. de Jure, tit. 8. dub. 8.*

may cause in the mouthes of the hired witnesses? what change he may worke in the Judge; what interposition of higher powers? There is a providence in this case to be relyed upon; which can and will bring about his owne holy purposes, without our presumptuous, and unwarrantable undertakings.

CASE II.

Whether may I lawfully make use of a Duell for the deciding of my right, or the vindication of my honour?

I have long agoe spent my opinion upon this point, in a large epistolar discourse, which I find no reason to alter: thither I might refer you to spare my labour; but lest perhaps that should not be at hand; shortly thus:

The sword in a private hand was

never ordained to be a decider of any controversies, save this one, whether of the two is the better Fencer ; nor yet that alwayes, since Ecclef. 9. 11. *The race is not to the swift, nor the battaile to the strong* ; as Solomon hath observed : It can be no better therefore, then a mere tempting of God, as * *Rodriguez* justly censures it, to put our selves, or our cause upon so unwarranted a triall : I find but two practices of it in the records of Scripture, the one, that famous challenge of *Goliath*, which that proud *Philistin* had not made, if he had not presumed of his Giantly strength, and stature, so utterly unmatchable by all *Israel*, 1 *Sam.* 17. 24. that the whole host was ready to give back upon his appearance ; he knew the advantage so palpable, that none would dare to undertake the quarrell, and had still gone on to triumph over that trem-

2271 * *Rodrig.* *Sam.* cap. 7. Tom. 3. cap. 73.

bling army, had not Gods unexpected champion, by divine instinct taken up the monster, and vanquisht him, leaving all but his head, to bedung that earth, which had lately shaken at his terrour.

The other was in that mortall quarrell betwixt *Joab* and *Abner*, on the behalf of their two Masters, *David* and *Ishboseth*; 2 Sam: 2: 14. wherein *Abner* invites his rivall in honor, to a Tragical play, (as he termes it) a monomachie of twelve single combatants on either part; which was so acted, that no man went victor away from that bloody Theater. Only it is observable, that in both these conflicts still the challengers had the worst.

In imitation of which latter, I cannot allow that which I find frequently done in the managing of publique hostility; that some confident Cavalier rout of mere bravery of spirit craves

craves leave to put himself forth before both armies, and (as in way of preface to an ensuing battaile) bids defiance to any Antagonist; An act of more valor then judgment; whereof the undertaking is void of warrant; and the issue (lightly) of success: whiles it pleaseth God commonly to punish presumption with a foyle; and the ominous miscarriage of one, proves a sad discouragement to many.

And if single fortitude be not triable this way, much lesse Justice in causes litigious; To make the sword arbiter of such differences, were no better then to revive the old Ordalian triall used by our Hea-then Ancestors: Sith God hath no more ordained, nor promised to bless the one then the other; And reason it selfe tels us, in how ill a condition that righteous cause is, which must be carried by the sharper weapon,

pon, the stronger arme, the skilfuller fencer.

Now whereas there are two acts, as introductions into the field, a Challenge, and an Acceptation, both of them have their guilt, but the former so much more, as it hath in it more provocation to evill.

I cannot therefore but wonder at, and cry downe the opinion of *Banhez*, and *Cajetan*, that a man slandered by an unjust accuser, may justly challenge him the field, and vindicate himselfe by the sword; A doctrine, which if it were allowed, and accordingly practiced, besides that it would destroy the course of justice, and wrest revenge out of the hands of the Almighty, were enough to make the world an *Aceldama*; For who would not be his owne Judge for the Accusation; and his owne Executioner for the revenge?

There may yet seem more innocence

cence in the Acceptation ; which makes ſhew of a mere paſſive nature, and appears to be extorted by the insolence of a provoking adverſary, whoſe preſſures are wont to receive ſuch conſtruction, as that the challenged party reſuſing, upon what ground ſoever, is in the vulgar opinion proclaimed for baſe and recreant ; and I muſt needs confeſſe, the irritation diminifheth the offence ; but withall, how ever the Spaniſh and Italian Caſuiſts (whoſe Nations are wont to ſtand a little too highly upon the points of a miſ-called honor) are wont to paſſe faire interpretations of the matter, I cannot but find it deeply guilty alſo : for what is this other, then a conſent to ſin by engaging in blood ; which by a man wife and conſcionable might be turned off with a juſt contempt, without imputation of cowardice : ſince the plea of conſcience is able to beare downe the

the vaine fancies of idle sword-men: or, if that will not be taken, the false blurres that are cast upon a worthy mans reputation by vulgar breath, deserve no entertainment but scorne; or lastly, other means lie open to both parts for the prooffe of a questioned valour, which in a lawfull way the challenged is ready to embrace; he walks not unprovided about the businesse of his calling, if he be fairly set upon, on equall terms, he shall make no doubt to defend himselfe: But to make a formall businesse of a quarrell, on either part, and to agree upon a bargaine of blood-shedding, is wicked and damnable; and though both should come fairly off, yet the very intention to kill, is murther.

This case is so cleare, that the Councell of * *Trent* hath thought fit to denounce heavy sentences, and in

* Conc. Tr. Sess. 25. Rodriguez. Tom. 1. c. 73. de duello.

strict sharp censures upon Emperours, Kings, States, and Potentates that shall give allownce to duels within their Dominions; pronouncing them *ipso iure* excommunicate; and depriving them of those townes, cities, lands, (if held of the Church) where such unlawfull acts are made: And that those who either act, or patronize, and by their presence assist, countenance, or abett such combats, shall incur the sentence of excommunication, the losse of all their goods, and perpetuall infamie; and if they dye in such quarrell, shall, as selfe-murtherers, be debarred the privilege of Christian buriall.

Briefly therefore, neither your justice, nor your honor may depend upon the point of private swords; and if there can be no other remedy, you must rather suffer in either, then hazard your soule.

Whether may it be lawfull, in case of
extremity, to procure the abortion
of the child, for the preservation of
the mother?

I Fear want of true judgement ren-
ders too many of the weaker sexe
grossely culpable in matters of willing
abortion; whiles, being not well
principled either in nature, or grace,
they thinke it not unlawfull, or at
least, venially so, whether out of
the fear of painfull child-birth, or
for the avoidance of too great a
charge; to prevent the fulnesse
of their conceptions; and there-
fore, either by over-vehement moti-
on, or unwholsome medicine, are
not unwilling to forestall nature, and
to free themselves early of that which
might in time prove their burden.
Wherein they little know how highly
they

they offend the Majesty of God in destroying his potentiall creature, and how heavy weight of guilt they lay upon their soules, whiles they in-deavour to give an undue case to their bodies.

Your question supposes an extremity; and surely such it had need to be, that may warrant the intention of such an event.

For the deciding whereof, our Casuists are wont to distinguish double; both of the state of the conception; and of the nature of the receipt: In the former, they consider of the Conception, either as it is before it receive life, or after that it is animated: Before it receive life, they are wont to determine, that howsoever it were no lesse then mortall sin, in a Physitian, to prescribe a medicinall receipt to cause abortion, for the hiding of a sinne, or any outward secular occasion; yet for the preservation

tion of the life of the mother, in an extreme danger, (I say, before animation) it might be lawfull: But after life once received, it were an hainous sinne to administer any such mortall remedy. The latter Casuists are better advised; and justly hold that to give any such expelling or destructive medicine, with a direct intention to work an aborsment, (whether before, or after animation) is utterly unlawfull, and highly sinfull: And with them I cannot but concur in opinion; For, after conception we know that naturally followes animation, there is only the time that makes the difference; which in this case is not so considerable, as to take off a sinne: That of * *Tertullian* comes home to the point which both *Covarruvias* and † *Lessius* urge to this purpose: *Homicidii festinatio est prohibere nasci*; It is but an hastening of mur-

* *Tertul.* in *Apol.* c. 9. † *Less.* l. 2. c. 9. du. 10.

der to hinder that which would be borne; *Homo est qui futurus est*; It is a man that would be so, &c.

Upon this ground we know that in a further degree of remoteness, a voluntary self-pollution hath ever been held to have so much guilt in it, as that *Angelus Politianus* reports it as the high praise of **Michael Ferrinus*, that he would rather die, then yeeld to it: how much more, when there is a further progresse made towards the perfection of humane life.

And if you tell me that the life of the mother might thus be preserved, whereas otherwise both she and all the possibilities of further conceptions are utterly lost; I must answer you with that sure and universall rule of the Apostle, that we may not doe evill that good may come thereon, Rom. 3. 8.

* *Ne se pollueret, magis ipse mori.* Ex Politiano Gerard. Voss. de orig. & progr. Idol. l. 3. c. 28.

The second consideration is of the nature of the receipt, and the intention of the prescriber; There are prescripts that may, in, and of themselves tend towards cure, and may have ordinarily such an effect; but yet being used and applyed for the mothers remedy, may prove the losse of the conception, being yet inanimate; these if they be given with no other intention then the preservation of the mothers life, may be capable of excuse; for that the inconvenience (or mischief rather) which followed upon the receipts was accidentally, and utterly against the mind, and hopes of him that advised them.

But if the conception be once formed, and animated, the question will be so much more difficult, as the proceedings of nature are more forward: Whereupon it is, that the Septuagint in their Translation (as *Lesius* well observes) have rendered
that

that Moſaicall law (in *Exod. 21.*) concerning abortions, in theſe termes. *If a man ſtrike a woman that is with child, and ſhe make an abortion, if the child were formed, he ſhall give his life for the life of the child; if it were not formed, he ſhall be puniſhed with a pecuniary mulct to her husband**: applying that to the iſſue, which the Vulgar Latin underſtands of the mother, and making the ſuppoſition to be of a formation and life; which the Latine more agreeably to the Originall, makes to be *Death*; and our Engliſh, with † *Caſtalion* expreſſes by *Miſchiefe*: but whether the Miſchief be meant of the death of the mother, or of the late-living iſſue, the Scripture hath not declared: * *Cornelius à Lapide* taking it expreſſly of the mothers

* *Exod. 21. 22.* The Septuagint ſeem to have taken *ἄνθρωπον* (death) for *ἄνθρωπον* a diminutive of *ἄνθρωπος* a man: as *Cornel. à Lapid.* probably gueſſes † *Caſtal. Si perniciēs non fuerit*: Ours, if no miſchief follow. * *Cornel. à Lap. in Exod. 21.*

death; yet draws the judgment out; in an equall length to the death of the child, once animated; making no difference of the guilt; since the infants soule is of no lesse worth, then hers that beares him.

In this case of the conception animated, I find the Casuists much divided; Whiles some more tender then their fellowes, will not allow in the utmost extremity of a dying mother, a medicine that may be directly curative to be given her, if it should be with any apparent danger of the child; in case that the child may be probably drawne forth alive; which they doe upon this false and bloodily uncharitable ground, * that the child dying without Baptisme, is liable to eternall damnation; which wofull danger therefore the mother ought

* Vel. ut alii, *Quorum anime certissime in limbum descendunt sine Baptismo.* Mart. Alphons. Viv. Explant. Bullæ de abort.

to prevent, though with the certaine hazard of her own life: but the foundation of this judgement being unsound, (since to doome the children of believing Parents inevitably to hell for the want of that which they are not possibly capable to receive, is too cruell and horrible) the structure must needs rotte. These men whiles they professe themselves too carefull of the soule of the child (which yet may perhaps be safer then their owne) seeme to be somewhat too hard-hearted to the body of the mother. blind and senseless in child.

* Others more probably hold, that if the case be utterly desperate, and it be certaine that both mother and child must undoubtedly perish, if some speedy remedy be not had, it may then be lawfull to make use of such receipts as may possibly give some hopes to save the mother.

* Rodr. Sum. To. 1. ca. 5. de Abort.

though not without some perill of the child.

But all this while, the intentions, and indeavours must be no other then preservatory; however it pleaseth God to order the events: Shortly, no man that purposely procureth an abortion, as such, can wash his hands from blood; No woman that wilfully acts, or suffers it, (how ever the secrecy may exempt her from the danger of humane lawes) can thinke to avoid those judgments of the righteous God, which he hath charged upon murderers.

I cannot here therefore forbear to give the world notice of the impious indulgence of a late Pope in this kind; *Sixtus quintus*, who in our time sat in the See of *Rome*, finding the horrible effects of that liberty, which too many both secular and religious persons took to themselves in this matter of abortion; in a just detestation of that

damnable practice, thought meet in much fervour of spirit to set forth his *Bulla Cruciate* ; then which there was never a more zealous piece, published to the world ; wherein that Pope pronounces all those which have any hand in the acting or procuring of this wicked fact, of the ejecting of conceptions, whether animate or inanimate, formed, or informed, by potions, or medicaments, or any other meanes whatsoever, to have incurred both the crime and punishment of man-slaughter: charging due execution to be done upon such persons accordingly : And withall in a direfull manner excommunicates them, and sends them to hell, (without repentance) reserving the absolution solely to himselfe and his successors.

Now comes a late * successor of his, *Gregory 14* ; who finding the

* Vid. Rodrig. ubi supra. noimods
sentence

sentence too unreasonably hard for his petulant, and thrifrie Italians, and, indeed, for all loose persons of both sexes; mitigates the matter; and, as a Spanish Casuist expresses it truly, in the very first yeare of his Pontificate in a certaine Constitution of his, dated at Rome, the last day of May, 1591. *delevit censuras, quas Sixtus V. imposuerat contra facientes, procurantes, &c.* abolisht and took off those heavy censures, which * *Sixtus* had imposed; and reduced the terrible punishments by him ordained to be inflicted unto a poore bare irregularity; and determines, that any Confessor allowed by the Ordinary, may absolve from this sin of procured abortion: By the sleightness of the censure, in effect, animating the sin: An act well becomming

* *Constit. Greg. 14. Quae dicit quod quivis Confessor approbatus ab Ordinario potest absolvere à peccato abortus. Ibid.*

the mother of Fornications : After all which Pandarisme, let all good Christians know, and resolve the crime to be no lesse then damnable.

But withall, let me advise you, (with * *Martinus Vivaldus*) that what I have herein written against the procurers of abortions, may not be extended to the practice of those discreet Physitians, and Chirurgeans, who being called to for their aide in difficult and hopelesse child-births, prescribe to the woman in travaile, such receits, as may be like to hasten her delivery, (whether the child be alive or dead:) forasmuch as the conception is now at the full maturity; and the indeavour of these Artists is not to force an aborsment, but to bring forward a naturall birth, to the preservation of the mother, or the child, or both.

* Mart. Alphons. Vivald. expli. Bull. Cruc.

CASE IV.

Whether a man adjudged to perpetuall imprisonment, or death, may in conscience endeavour, and practice an escape.

WHAT the Civill or Common lawes have in this case determined for the publique good, comes not within the compasse of our disquisition: Let the Gaurdians, and Ministers of those lawes looke carefully to the just execution of them accordingly: The question is onely of the law of private conscience; how far that will allow a man to goe in case of a sentence passed upon him, whether of death or bonds.

And first of all; if such sentence be unjustly passed upon an innocent, no man can doubt, but that he may most lawfully by all just meanes worke his owne freedome: But if

an offender, what may he doe? The common opinion of Casuists is peremptory; * That he that is kept in prison for any offence wherupon may follow death, or losse of limb, whether the crime be publique or private, may lawfully flee from his imprisonment, and may for that purpose use those helps of filing, or mining, which conduce to this purpose: Their ground is, that universall rule, and instinct of selfe-preservation, which is naturall to every creature; much more eminent in man, who is furnished with better faculties then the rest, for the working of his own indēnity: Whereto is added that main consideration of *Aquinas*; That no man is bound to kill himselfe, but onely doomed to suffer death; not therefore bound to doe that upon which death will inevitably follow, which

* *Qui retinetur in carcere propter aliquod delictum, &c.*
 Rodrig. Sum. cap. 40.

is to wait in prison for the stroak, if he may avoid it; it is enough that he patiently submits to what the law forces upon him, though he doe not cooperate to his owne destruction: his sentence abridges him of power, not of will to depart: Whereupon they have gone so far, as to hold it in point of conscience not unlawfull for the friends of the imprisoned, to conveigh unto him files, and cords, or other instruments usefull for their escape: But herein some better-advised Doctors have justiy dissented from them; as those, whose judgment hath not beene more favourable to malefactors, then dangerous and prejudiciall to the Commonwealth: for how safe soever this might seeme in lighter trespasses, yet if this might be allowed as in conscience lawfull to be done to the rescue of murthers, traytors, or such other flagitious villains, what infinite mischief might

it produce: and what were this other then to invite men to be accessory to those crimes, which the law in a due way intends to punish: Certainly, by how much a more laudable act of Justice it is, to free the society of men from such wicked miscreants, by so much more sinfull and odious an office it were, to use these sinister means for their exemption from the due course of Justice; But howsoever for another man to yeeld such unlawfull aid, is no better then a foule affront of publique Justice, and enwrappes the agent in a partnership of crime; yet the law of nature puts this liberty upon the restrained party himselfe, both to wish and indeavour his owne deliverance: Although not so; but that if the prisoner have ingaged himselfe by solemne promise, and oath to his keeper, not to depart out of his custody; honesty must prevaile above nature; and he ought rather to

to die, then violate that bond which is stronger then his irons: Very Heathens have by their example taught us this lesson; To regard our fidelity, more then our life: Thus it should be, and is, with those that are truly Christian and ingenuous, under whatever captivity; but in the case of gracelesse and felonious persons, Gaolers have reason to looke to their bolts and lockes; knowing (according to the old rule of wise *Thales*) that he who hath not stuck at one villanie, will easily swallow another; perjury will easily downe with him, that hath made no bones of murder.

But where the case is entire, no man can blame a captive if he would be free; and if he may untie the knot of a cord, wherewith he was bound; why may he not unrivet, or grate an iron wherewith he is fettered? for so much as he is not bound, to yeeld,

or continue a consent to his owne durance : This charge lies upon the keeper, not the prisoner.

A man that is condemned to perish by famine, yet if he can come by sustenance may receive, and eat it: That Athenian malefactor, in * *Valerius Maximus*, sentenced to dye by hunger, was never found fault with, that he maintained himselfe in his dungeon by the breasts of his good-natur'd daughter.

And if a man be condemned to be devoured by a Lion, there can be no reason why he should not (what he may) resist that furious beast, and save his owne life.

But when I see our Romish Casuists so zealously tender in the case of Religious persons, as that they will not allow them upon a just imprisonment to stirre out of those grates whereto they are confined by

* Val. Max. l. 5. Dem. Set. de Jure, Sec. l. 5. q. 5.
the

the doome of their Prelates; And when I see the brave resolutions of holy Martyrs, that even when the doores were set open, would not flee from a threatned death, I cannot but conclude, that whatsoever nature suggests to a man, to worke for his owne life or liberty, when it is forfeited to Justice, yet that it is meet and commendable in a true penitent; when he finds the doome of death or perpetuall durance justly passed upon him, humbly to submit to the sentence; and not intertaine the motions and means of a projected evasion: but meekly to stoop unto lawfull authority, and to wait upon the issue whether of Justice, or Mercy: and at the worst, to say with him in the Poet, *Mervi, nec deprecor.*

CASE V.

*Whether, and how farre a man may be
urged to an Oath.*

AN Oath, as it is a sacred thing, so it must be no otherwise then holily used; whether on the part of the giver, or taker; & therefore may neither rashly be uttered, nor unduly tendered upon sleight, or unwarrantable occasions: We have not to doe here with a promissory oath, the obligation whereof is for another inquisition; It is the assertory oath that is now under our hand; which the great God by whom we sweare, hath ordained to be an end of controversies; *At the mouth of two or three witnesses shall the matter be established, Deuter. 19.15. & 17.6.* As for secular titles of *mine*, or *thine*, the propriety of goods, or lands, next after written evidences, testimonies upon Oath must

must needs be held most fitly decisive; the onely scruples are wont to be made in causes criminall.

1. Wherein surely we may lay this undoubted ground, that no man is to be proceeded against without an accuser, and that accusation must be made good by lawfull witnesses: A Judge may not cast any man upon the plea of his owne eye-sight: should this liberty be granted, Innocence might suffer, and Malice triumph: Neither may any man be condemned upon heare-say, which how commonly false it is, daily experience sufficiently evinceth.

On the other side, men are apt enough to connive at each others wickednesse; and every man is loath to be an Informer, whether out of the envy of the office, or out of the conscience of his owne obnoxiousnesse.

And yet thirdly, it is requisite that care should be taken, and all due
meanes

meanes used by authority, that the world may not be over-run with wickednesse; but that vice may be found out, repressed, punished.

There cannot, fourthly, be devised a fairer, and more probable course for the effecting hereof, then by the discovery upon oaths of the officers and Jurors in Assises, and Sessions; and of Churchwardens, and Side-men in Visitations.

The ground of all presentments to; or by these men must be either their owne knowledge, or publique fame, or an avowed information. Any of these gives a lawful hint to the Judge; whether Ecclesiasticall or Civill, to take full triall of the cause and person.

Knowledge is alwayes certaine, but fame is often a lyar; and therefore every idle rumour must not be straight taken upon trust; the inconvenience and injury whereof I have often scene;

seene; when some malicious person desiring to doe a despight to an innocent neighbour, raises a causelesse slander against him, whispers it to some disaffected Gossips, this flies to the care of an Apparitor; hee straight runs to the Office, and suggests a publique fame; the honest man is called into the Court; his reputation is blurred in being but summoned; and after all his trouble and disgrace hath his amends in his owne hands.

The rule of some Casuists, that ten tongues make a fame, is groundlesse and insufficient; neither is the number so much to be regarded as the quality of the persons:

If a whole pack of debauched companions shall conspire to staine the good name of an innocent (as we have too often knowne) it were a shamefull injustice to allow them the authors of a fame: the more judicious

ous Doctors have defined a publique
fame by the voyce of the greater part
of that Community, wherein it is
spread, whether Towne, Parish, Citye
and therein of those that are discreet,
honest, well-behaved. We are wont
to say, Where there is much smoke,
there is likely some fire : an universall
report from such mouthes, therefore,
may well give occasion to a further
inquiry. If any mans zeale against
vice will make it a matter of instance,
the case is cleare, and the proceeding
unquestionable ; But if it be matter of
mere office, the carriage of the pro-
cessse may be liable to doubt ; Herein
it is meet such course be taken, as that
neither a notorious evill may be smo-
thered, nor yet innocence injured :
To which purpose the most confident
reporter may be called upon (because
same hath too many tongues to speak
at once) to lay forth the grounds of
that his whispered crimination ; and
if

if the circumstances appeare pregnant, and the suspicions strong, I see not why the Ecclesiasticall Judge (for with him onely in this case I professe to meddle) may not convent the person accused, lay before him the crime which is secretly charged upon him; and either upon his ingenuous confession, enjoyne him such satisfaction to the scandalized Congregation as may be most fit, or upon his denyall urge him to cleare himselfe by lawfull witnesses, of the crime objected; Or why he may not, if he see further cause, appoint a discreet and able prosecutor to follow the businesse in a legall way; upon whom the accused, if he be found guiltlesse, may right himselfe.

But all this while, I finde no just place for an oath to be administered to a man for his owne accusation, which certainly, is altogether both illegall, and unreasonable; If a man
will

will voluntarily offer to cleare himſelfe by an Oath, out of the aſſuredneſſe of his owne innocence, he may be allowed to be heard, but this may neither be preſſed to be done, nor yet concluſive, when it is done; for both every man is apt to be partiall in his owne caſe, and he that durſt act a foule ſin will dare to face it. It was ever therefore lawfull (even when Eccleſiaſtical Inquiſitions were at the higheſt) for a man to reſuſe answer to ſuch queſtions upon oath, or otherwiſe, which tended to his owne impeachment; as unjuſtly, and unwarrantably propoſed: and it was but a young determination of * *Aquina*, when he was onely a Bachelour, in the Generall Chapter at *Paris*, contradicted by all the ancient Graduates there, that when the crime is notorious, and the authour unknowne, the

* Silveſtr. V. Correſt. Dom. Sor. l. 5. de Jure, q. 4. Leſſ. de Judice l. 2. c. 29.

secret offender is bound upon his Ordinaries charge and command, to reveale himselfe.

Even the Spanish Casuists, the great favourers and abettors of the Inquisition, teach that the Judge may not of himselfe begin an inquiry, but must be led by something which may open a way to his search, and as it were force him to his proceeding, *ex officio*, as publique notice, infamie, common suspicion, complaint; otherwise, the whole processe is void in law; although herein some of them goe too far in favour of their great *Diana*, that where the crime is known, and the author unknowne, the Judge may in a generality inquire of him that did it, and if he have any private information (though without any publique fame foregoing) he may in some cases, raise a particular inquisition upon the party, and call him to defend himselfe; which course certainly,

certainly, gives too much advantage to private malice; and opens too much way to the wronging of Innocence. The faire way of proceedings in all Christian Judicatures, should be, by accuser, witnesse, and Judge; in distinct persons, openly knowne; the accuser complains, the witnesse evinceth, the Judge sentences: The one may not be the other; much lesse all three: Were that to be allowed, who could be innocent.

When a witnesse then is called before a competent Judge, to give evidence upon oath concerning a third person, in a matter cognoscible by that Jurisdiction, he is bound to swear *in truth, in judgement, and in righteousness*; *Jer. 4. 2.* as for his own concernments, he must referre himself to the testimonies and oathes of others.

CASE

CASE VI.

Whether a Judge may upon allegations, proofes, and evidences of others, condemn a man to death, whom he himselfe certainly knows to be innocent.

THe question hath undergone much agitation; The streame of all ancient Divines, and Casuists runs upon the affirmative; their ground is, that the Judge as he is a publique person, so in the seat of Judicature he must exercise a publique authority; and therefore waving his private knowledge and interest, must sentence according to the allegations and proofes brought before him; since he is a Judge of the cause, not of the law; whereof he is to be the servant, not the master: There he sits not to speake his owne judgement, but to be the mouth of the law, and the law commands him to judge

judge according to the evidence ; the evidence therefore being cleare and convictive, the doome can be no other then condemnatory.

For my part, I can more marvell at their judgement herein, then approve it ; professing for the negative, with some fewer and latter Authors, upon these sure grounds.

It is an evident and undeniable law of God which must be the rule of all Judges ; *The innocent and the righteous slay thou not, Exod. 23. 7.* This is a Law neither to be avoided, nor dispensed with : Accusations and false witnesses cannot make a man other then innocent ; they may make him to seeme so ; in so much as those that know not the cause exactly, may perhaps be mis-led to condemne him, in their judgments : But to the Judge, whose eyes were witnessses of the parties innocence, all the evidence in the world cannot make him other then
guilt-

guiltlesse; so as that Judge shall be guilty of blood, in slaying the innocent, and righteous.

Secondly, the law of judging according to allegations and proofs is a good generall direction in the common course of proceedings; but there are cases wherein this law must vaile to an higher, which is the law of Conscience; Woe be to that man who shall tye himselfe so close to the letter of the law, as to make shipwrack of conscience; And that bird in his bosome will tell him, that if upon what ever pretences; he shall willingly condemne an innocent, he is no better then a murtherer.

Thirdly, it is not the bare letter of the law that wise men should stand upon, but the drift and intention of the law; of that, we may in some sense say as the Apostle did of an higher law, *The letter killeth*. Now every reasonable man knowes that the
intention

intention of the law, is to save and protect the Innocent; to punish only the guilty: The Judge therefore shall be a perverter of law, if, contrary to his knowledge, he shall follow the letter against the intention, in condemning an Innocent.

Let no man now tell me, that it is the law that condemnes the man, and not the Judge; This excuse will not serve before the Tribunal of heaven; The law hath no tongue; It is the Judge that is *lex loquens*; If he then shall pronounce that sentence which his owne heart tells him is unjust and cruell, what is he but an officious minister of injustice? But, indeed, what law ever said, Thou shalt kill that man whom thou knowest innocent, if false witness will swear him guilty? This is but a false glosse set upon a true text, to countenance a man in being an instrument of evil.

What then is in this case to be done?

done? Surely, as I durst not acquit that Judge, who under whatever colour of law should cast away a known Innocent, so I durst not advise against plaine evidences and flat dispositions, upon private knowledge, that man to be openly pronounced guiltlesse; and thereby discharged; for as the one is a grosse violation of justice; so were the other a publique affront to the law; and of dangerous consequence to the weale-publique: Certainly, it could not but be extreemly unsafe, that such a gappe should be opened to the liberty of judgement, that a private brest should be opposed (with an apparent prevalence) against publique convictions: Our Casuists have beaten their brains to find out some such evasions, as might save the innocent from death, & the Judge from blood-guiltinesse: Herein therefore they advise the Judge to use some secret means to stop the accusation

or indictment; (a course that might be as prejudiciall to justice, as a false sentence) To sift the witnesses apart, as in *Susannas* case, and by many subtile interrogations of the circumstances to find their variance or contradiction. If that prevaile not, *Cajetan* goes so farre, as to determine it meet (which how it might stand with their law, he knowes, with ours it would not) that the Judge should before all the people give his oath, that he knowes the party guiltlesse; as whom he himselfe saw at that very hour in a place far distant from that, wherein the fact is pretended to be done: Yea * *Dominicus à Soto* could be content (if it might be done without scandall) that the prisoner might secretly be suffered to slip out of the gaole, and save himself by flight. Others think it the best way, that the Judge should put off the cause to a su-

* Dom. à Sor. de Jure; &c. lib. 4. tit. 10.

perious Bench; and that himselfe should (laying aside his scarlet) come to the Bar, and as a witnesse avow upon oath the innocence of the party, and the falsity of the accusation: Or lastly, if he should out of malice, or some other sinister ends (as of the forfeiture of some rich estate) be pressed by higher powers to passe the sentence on his owne Bench, that he ought to lay downe his Commission, and to abdicate that power he hath, rather then to suffer it forced to a willing injustice.

And truly were the case mine, after all faire and lawfull indeavours to justify the innocent, and to avoid the sentence, I should most willingly yeeld to this last resolution: Yea rather my selfe to undergoe the sentence of death, then to pronounce it on the knowne-guiltlesse; hating the poore pusillanimity of *Dominicus à*

*Sata**, that passes a *nimis creditu rigidum*, upon so just a determination; and is so weakly tender of the Judges indemnity, that he will by no meanes heare of his wilfull deserting of his office on so capitall an occasion.

In the maine cause of life & death, I cannot but allow and commend the judgment of *Leonardus Lessius*; but when the question is of matters Civil, or lesse criminall, † I cannot but wonder at his flying off; In these wherein the businesse is but pecuniary, or banishment, or losse of an office, he holds it lawfull for the Judge, (after he hath used all meanes to discover the falseness of the proofes, and to hinder the proceedings, if thus he prevailes not) to passe sentence upon those allegations and probations, which himselfe knowes to be unjust.

* *Etenim quod homo qui officio suo vivit debeat tantam iacturam facere, durum creditu est. Dom. Sor. ubi supra.* † In causis civilibus et minus criminalibus.

The reasons pretended are as poor as the opinion; * For, saith he, the Commonwealth hath authority to dispose of the estates of the subjects, and to translate them from one man to another, as may be found most availing to the publique good; and here there appears just cause so to doe, lest the forme of publique judgments should be perverted, not without great scandall to the people; neither is there any way possible to help this particular mans inconvenience and losse; therefore the Commonwealth may ordaine that in such a case the Judge should follow the publique forme of Judicature, though hereby it falleth out that a guiltlesse man is undone in his fortunes; and yet his cause knowne to be good by him that condemnes it. Thus he.

But what a loose point is this?

* Less. de Jure, &c. l. 2. de Judice Dub. 10. *Quia resp. habeat auctoritatem disponendi, &c.*

why hath not a man, as true propriety in his eſtate as his life? or what authority hath the Common-wealth, cauſeleſſly to take away a mans ſubſtance or inheritance (being that he is the rightfull owner) more then a piece of himſelfe? When his patrimony is ſetled upon him and his in a due courſe of law and undoubted right of poſſeſſion, what juſt power can claim any ſuch intereſt in it as without any ground of offence to diſpoſſeſſe him? Or what neceſſity is there that the form of publique judgements ſhould be perverted, unleſſe an honeſt defendent muſt be undone by falſe ſentence? Or rather is not the forme of publique judgement perverted, when innocence ſuffers for the maintenance of a formality? Or how is the Judge other then a partner in the injury, if for want of his ſeaſonable interpoſition a good cauſe is loſt, and a falſe plea prevailes?

That

That therefore, which in the second place he alledgeth, that the Subject can have no reason to complaine of the Judge, for as much as it is out of his power to remedy the case, and to passe other sentence then is chalked forth by the rule of law; might as well be alledged against him in the plea of life and death, wherein he will by no meanes allow the Judge this liberty of an undue condemnation; neither is there any just pretence why an honest and well-minded Judge should be so sparing in a case of life, and so too prodigall in matter of livelyhood.

As for his third reason, that the mis-judgment in case of a pecuniary damage or banishment, may be afterwards capable of being reversed, and upon a new Traverse the cause may be fetcht about at further leasure; whereas death once inflicted is past all power of revocation; It may well

inferre that therefore there should be so much more deliberation, and care had in passing sentence upon capitall matters, then civill, by how much life is more precious, and irrevocable, then our worldly substance; but it can never inferre that injustice should be tolerable in the one, not in the other. Justice had wont to be painted blindfold, with a paire of scales in her hand; wherefore else, but to imply that he who would judge aright, must not look upon the issue or event, but must weigh impartially the true state of the cause in all the grounds, and circumstances thereof, and sentence accordingly? To say then that a Judge may passe a doome formally legall, but materially unjust, because the case upon a new suit may be righted, were no other then to say, I may lawfully wound a man, because I know how to heale him againe.

Shortly therefore, whether it be in causes

causes crimiall, or civill, whether concerning life, or estate, let those who sit in the seat of Judicature, as they will answer it before the great Judge of the world, resolve (what event soever follow) to judge righteous judgement, not justifying the wicked, not condemning the innocent; both which are equally abominable in the sight of the Almighty.

CASE VII.

Whether, and in what cases am I bound to be an accuser of another.

TO be an accuser of others, is a matter of much envy, and detestation; in so much as it is the stile of the Devill himselfe to be *accusator fratrum*, an accuser of the brethren: Yet not of his owne brethren in evill; It was never heard that one evill spirit accused another; but of *our brethren*:

thren; *Revel. 12. 10.* it was a voice from heaven which called him so: Saints on earth are the brethren of the glorious spirits in heaven; It is the wickednes of that malicious spirit to accuse Saints: But though the act be grown into hatred, in respect both of the agent and of the object; yet certainly there are cases wherein it will become the Saints to take upon them the person, and office of accusers.

Accusation therefore is either voluntary, or urged upon you by the charge of a superiour. Voluntary is either such as you are moved unto by the conscience of some hainous and notorious crime committed, or to be committed by another, to the great dishonor of God, or danger of the common peace, whereto you are privy: or such as whereunto you are tyed by some former engagement of vow, or oath: In the former kinde;

a worthy Divine in our time travailing on the way, sees a leud man committing abominable filthinesse with a beast; the sin was so foule and hatefull, that his heart would not suffer him to conceale it; hee therefore hastens to the next Justice, accuses the offender of that so unnaturall villany; the party is committed, endicted, and upon so reverend (though single) testimony found guilty.

Or, if in the case of a crime intended, you have secret, but sure intelligence, that a bloody villaine hath plotted a treason against the sacred person of your Soveraigne, or a murder of your honest neighbour; which he resolves to execute; should you keepe this fire in your bosome, it might justly burne you. Whether it be therefore for the discovery of some horrible crime done, or for the prevention of some great mischiefe to be done, you must either be an accuser, or an accessory. The

The obligation to accuse is yet stronger where your former vow or oath hath fore-engaged you to a just discovery; You have sworn to maintaine and defend his Majesties royall person, state, dignity; and to make knowne those that wilfully impugne it; if now, you shall keepe the secret counsels of such wicked designments, as you shall know to be against any of these, how can you escape to be involved in a treason, lined with perjury?

These are accusations which your conscience will fetch from you, unasked; But if being called before lawfull authority, you shall be required upon oath, to testifie your knowledge even concerning offenders, of an inferiour nature; you may not detract your witnesse, though it amount to no lesse then an accusation. Yet there are cases, wherein a testimony thus required, tending to an accusa-

tion.

tion, may be refused ; As in case of duty, and nearenesse of naturall, or civill relation ; It were unreasonably unjust for a man to be pressed with interrogations, or required to give accusatory testimonies in the case of parents, or children, or the partner of his bed : Or if a man out of remorse of conscience shall disclose a secret sin to you formerly done, in a desire to receive counsaile, and comfort from you ; you ought rather to endure your soule to be fetcht out of your body, then that secret to be drawne out of your lips : Or if the question be illegall, as those that tend directly to your owne prejudice ; or those which are moved concerning hidden offences, not before notified by publique fame, or any lawfull ground of injury, which therefore the Judge hath no power to aske. In these cases, if no more, the refusall of an accusation, though required, is no other then justifiable.

But

But where neither the conscience of the horridnesse of a crime done ; nor prevention of a crime intended , nor duty of obedience to lawfull authority ; nor the bond of an inviolable pre-ingagement, call you to the Bar ; It is not a more uncharitable, then thanklesse office to be an accuser : Hence it is that Delators, and Informers, have in all happy and well-governed States, been ever held an infamous and odious kind of Cattell. A *Tiberius*, and a *Domitian*, might give both countenance and rewards to them, as being meer factors for their tyranny, but a *Vespasian*, and *Titus*, and *Antoninus Pius*, and *Macrinus*, or what ever other Princes carryed a tender care to the peace and welfare of their subjects, whipt them in the publique Amphitheater, and abandoned them out of their dominions, as pernicious, and intolerable. And as these mercenary Flies, whether of

But
State;

State, or of Religion, are justly hatefull, next to the publique executioners; so certainly, those busie spirited men, which out of the itching humour of meddling, run from house to house, with tales of private detraction, may well challenge the next roome in our detestation. This together with the other, is that which God so strictly forbids in his Law, *Levit. 19. 16. Thou shalt not goe up and downe as a Tale-bearer amongst thy people, neither shalt thou stand against the blond of thy neighbour: I am the Lord.* A practice which wise *Solomon*, though a great King; and (as one would think) out of the reach of tongues, cryes downe with much feeling bitternesse; *Prov. 18. 8. The words of a Tale-bearer are as wounds, and they goe downe into the innermost parts of the belly.* No lesse then five severall times in his divine * *Proverbs*, inveighing sharply (as if
* Prov. 11. 13. 19. 16. 20. 16. 2.
him-

himselfe had been stung in this kind) against these close, back-biting calumniationes.

Shortly then, accuse when you are forced, either by the foulnessse of the fact, or the necessity of your duty: otherwise reserve your tongue for better offices.

CASE VIII.

Whether a prisoner indicted of a felonious act, which hee hath committed, and interrogated by the Judge concerning the same, may stand upon the deniall, and plead not guilty.

THE Casuists vary; and out of respect to their owne Lawes, are much perplexed in their resolutions: making the great scruple to be in the Juridicall interrogations, (which if the Judge have not proceeded in the due formes of law required in such cases)

cases) may warrant the offenders deniall; and secondly; making difference of the quality of the offence, and danger of the punishment; which if no lesse then capitall, may (say they*) give just ground to the accused party, either to conceale the truth, or to answer with such amphibolies, and equivocations, as may serve to his owne preservation; in which course, naturall equity will beare him out, which allowes every man to stand upon his owne defence: And the case I perceive is aggravated in forraine parts, as by the Rack, so by an Oath administred to the person accused, (which they call † *Furamentum calumniae*) which *Lessius* justly calls a spirituall torture, by the vertue whereof, he is solemnly urged, not to deny what he knowes, or beleeves to be true, concerning the bu-

* Rodriguez. Tract. Ordinis Judicialis. cap. 10.

† Sotus l. 5. q. 6. de Justi. 11. Rel, Art. 2.

finerſſe queſtioned ; A praſtiſe, which I cannot blame * *Leſſius*, if he profeſſe to wiſh that the Pope, and all ſecular Princes, would joine together to abrogate ; as being an evident occaſion of much perjurie. To lay downe and determine the caſe as it ſtands with us in our ordinary proceedings of juſtice ; it muſt be pre-miſed :

1. To deny a known truth, and to averre a wilfull lye, cannot be other then a ſin.

2. There is a vaſt difference betwixt concealing a Truth and denying it.

3. It may be ſometimes lawfull to conceale ſome Truths, though never lawfull to deny, or contradict them.

4. No man can be bound directly to accuſe himſelfe.

5. It is conſonant to naturall equi-

* *Leſ. de jur. L. 2. cap. 13. dub. 3.*

ty,

ty, that a man for the saving of his life should use the help of all evasions that are not sinfull.

6. It cannot be sinfull to put himselfe upon a legall triall in a case importing his life.

7. There is no place for a legall triall, where there is an absolute confession of guiltinesse.

These positions being pre-required ; I say, that it is lawfull for the prisoner, though convinced in his conscience of the fact, yet to plead *Not guilty* to the Indictment at the Barre: for as much as he doth therein, according to the sense both of the Judge, and Jury, onely hide and keep back that Truth ; the finding out, and evi-
 ction whereof, lyes upon their further search and prooffe ; so as he doth, in pleading *Not guilty*, in effect as good as say, What ever I find in my selfe, I have no reason to confesse my guiltinesse ; I stand upon my lawfull defence,

fence, and caſt my ſelfe upon my juſt tryall; Yeelding my ſelfe onely ſo far guilty, as your evidence and proofes can make me: let Juſtice paſſe upon me, I have no reaſon to draw on my owne condemnation: The plea thus conſtrued is lawfull, and juſt; wherein not the ſhuffling equivocations of the offender, but the upright verdict of a legall Jury muſt carry the cauſe: to which purpoſe, that which ſounds as a deniall in the accused, is nothing elſe but a profeſſed referring himſelfe to a juridicall tryal of that fact which he is not bound to confeſſe.

But when the hand of God hath once found out the man in his finne; and he finds himſelfe legally convinced of his crime; it greatly behoves him (as *Joſhua* charged *Achan* after the lot had diſcovered his fin) to give glory to God, in a free and full confeſſion of his wickedneſſe, and to be more open and ingenuouſ in his acknowledgment,

ledgment, then he was close, and reserved in his plea : wherein as he shall discharge his conscience to that great and holy God, whom he hath offended, so he shall thus tender some kind of poore satisfaction to that society of men, whom he hath scandalized by his crime. In which regard I cannot but marvell at the strange determination of learned * *Azpilcueta*, the Oracle of *Confessaries*, who teaches, that the prisoner, who being rightly interrogated by the Judge, stood stiffly in deniall of the fact, and is upon his Condemnation, carried to his execution, is not bound at his death to confesse the crime to the world, if he have before secretly whispered it in the eare of his ghostly father, and by him received absolution.

A sentence that allows the smothering of truxhes, and the strangling of just satisfaction to those who are

* Mart. Azpil. Navar. enchirid. cap. 25. num 38.

concerned,

concerned, as patience, in the offence; and lastly, highly injurious to publique Justice; whose righteous sentence is by this meanes left questionable, and obnoxious to unjust censure.

How much more requisite were it that a publique confession should, in this case, save the labour of a private, whereby certainly, the soule of the offender would be more sensibly unloaded, justice better vindicated, more glory would accrew to God; and to men, more satisfaction.

But however it be lawfull for the accused to stand upon these points of legality in the proceedings against him: yet for my owne part; should I be so farre given over, as to have my hand in blood; and thereupon be arraigned at the barre of publique Justice; I should out of just remorse be the first man that should rise up against my selfe; and (which in other
mens

mens cases were utterly unlawfull)
be my owne accuser, witnesse, and
Judge: and this disposition I should
rather commend in those, whose con-
science hath inwardly convicted them
for haynously criminous: that since
they had not the grace to resist so fla-
gitious a wickedness; they may yet
endeavour to expiate it, before men,
with an ingenuous confession: as be-
fore God, with a deepe and serious
repentance.

CASE IX.

*Whether, and how farre a man may
take up armes in the publique quarrell
of a war.*

WArre is no other then a neces-
sary evill, necessary in relation
to peace: onely, as that without
which so great a blessing cannot be
had. As the wise woman said to
Joab,

Joab, 2 *Sam.* 20. 18. they should first treat with the men of *Abel*, ere they smite : & upon the charge of the Lord of hosts, *Dent.* 20. 10. conditions must first be tendered even to heathen enemies, before any acts of hostility shall be exercised ; where this which is the worst of all remedies, proves needfull, if you aske how farre it is lawfull to ingage ; I must aske you, (ere I can returne answer) first of the justice of the quarrell : for surely, where the warre is knowne to be unjust, the willing abettors of it cannot wash their hands from blood : To make a warre just (as our *Casuits* rightly) there must be a lawfull authority to raise it ; a just ground whereon to raise it ; due formes and conditions in the raising, managing, and cessation of it : That no authority lesse then supream can wage a warre, it is cleare in nature ; for that none other besides it can have power
of

of life and death ; which both must
lye at the publique stake in warre.

That none but a iust and weighty
cause can be the ground of a warre,
every mans reason apprehends ; for
how precious a blessing had that need
to bee, that is held worth the purcha-
sing with the price of so much bloud ;
and how heavy a curse must that
needs be, which can onely be remedi-
ed , or prevented by so grievous a
judgment as warre ?

That due termes and conditions
are requisite to be offered ere warre
be undertaken ; and observed in the
managing, and ceasing of it, huma-
nity it selfe teacheth us ; without
which men should run upon one ano-
ther with no lesse fury and disorder
then beasts ; not staying for any capi-
tulation but the first advantage ; nor
terminating their discord in any thing
but utter destruction.

Where all or any of these are wan-
H
ting,

ring, the warre cannot be juſt: and where it is known not to be ſuch, woe be to thoſe hands that are willingly active in proſecuting it.

Now the care of all theſe three maine requiſites muſt lie chiefly upon that Power which is entrusted by the Almighty with the over-ruling of publique affaires: For the Subject, as he is bound to an implicate reliance upon the command of the ſupreme power; ſo (unleſſe it be in a caſe notoriously apparent to be unjuſt) muſt yeeld a blindfold obedience to authority; going whither he is led, and doing what he is bidden; But if the caſe be ſuch, as that his heart is fully convinced of the injuſtice of the enterpriſe, and that he clearly finds that he is charged to ſmite Innocence and to fight againſt God; I cannot blame him, if with *Sauls* footmen (when they were commanded to fall upon the Priests of the Lord) he withhold his

his hand, and craving pardon, show lesse readinesse to act, then to suffer.

In the second place, I must aske you with what intentions you ad-dresse your selfe to the field; If it be out of the conscience of maintaining a just cause, if out of a loyall obedience to lawfull authority: I shall bid you go on, and prosper: but if either malice to the parties opposed, and therein desire of revenge, or a base covetousnesse of pay, or hope and desire of plunder have put you into armes: repent and withdraw: For what can be more sordid, or cruell, then to be hired for dayes-wages to shed innocent blood? Or what can be more horribly mischievous for a man, then to kill, that hee may steale?

Upon your answer to these questions it will be easie for me to returne mine; In a just quarrell, being there-to lawfully called, you may fight;

warrantable authority hath put the ſword into your hand; you may uſe it. But take heed that you uſe it with that moderation, and with thoſe affections that are meet: Even an authorized hand may offend in ſtriking; Magiſtrates themſelves, if there be revenge in their executions, doe no other then murder: Far be it from you to take pleaſure in blood; and to enjoy another mans deſtruction: If (eſpecially in thoſe wars that are inreſtine) you ſhall mingle your teares with the blood which you are forced to ſpill, it may well become Chriſtian fortitude.

Shortly; doe you enter into your armes, impreſt, or voluntary? If the former, you have nothing but your owne heart to looke unto for a fit diſpoſition; That Power, whom you juſtly obey, muſt answer for the cauſe; If the latter, you have reaſon diligently to examine all the neceſſary

fary points, of the Power, of the
cause, of your intentions: as well
considering that in a warre it is no
lesse impossible that both sides should
be in the right, then that in a contra-
diction both parts should be true:
Here therefore your will makes it
selfe the Judge of all three; and (if
any of them faile) leaves you answer-
able for all miscarriages; for as you
had need to be carefully inquisitive,
in this case, upon what grounds you
goe; that so (whatsoever may befall)
a good conscience may beare you
out in the greatest difficulties, and
saddest events that are wont to at-
tend upon warre.

H 3**C A S E**

CASE X.

*Whether and how farre a man may act
towards his owne Death.*

Directly to intend or indeavour
that which may worke his owne
death, is abominably wicked, and no
leſſe then the worſt murder.

For if a man may not kill another,
much leſſe himſelfe; by how much
he is nearer to himſelfe then to ano-
ther: and certainly if we muſt regu-
late our love to another by that to
our ſelves, it muſt follow that love
to our ſelves muſt take up the firſt
roome in our hearts: and that love
cannot but be accompanied with a
detestation of any thing that may be
harmfull to our ſelves. Doubtleſſe,
many that can be cruell to another
are favourable enough to themſelves;
but never man that could bee cruell
to himſelfe would be ſparing of ano-
thers blood. To

To will or attempt this is highly injurious to that God, whose we only are ; who hath committed our life as a most precious thing to our trust, for his use, more then our owne ; and will require from us an account of our managing of it, and our parting from it. It is a foule misprision in those men , that make account of themselves as their owne , and therefore that they are the absolute Lords of their life : Did they give themselves their owne being ; had they nothing but meere nature in them ; can they but acknowledge an higher hand in their formation, and animating ? What a wrong were it therefore to the great Lord and giver of life, to steale out of the world, without his leave that placed us there ? But much more if Christians, they know themselves , besides , dearly paid for ; and therefore not in their own disposing, but in his that bought them.

them. Secondly, most desperately injurious to our selves, as incurring thereby a certaine damnation (for ought appears to lookers on) forever, of those soules which have wilfully broken Gods more easie, and temporary prison, to put themselves upon the direfull prison of Satan to all eternity.

Nature in selfe, though not enlightened with the knowledge of the estate of another world, found cause to abhor this practice: However the Stoicall Philosophers, and some high Roman spirits following their doctrine, have been liberall of their lives; the *Thebans* of old professed detestation of this worst of prodigalities: And the *Athenians* enacted that the hand which should be guilty of such an act, should be cut off, and kept unburied; And it was wisely ordained by that Grecian Commonwealth, when their Virgins (out of a pcevish

peevishe discontentment) were grown into a selfe-killing humour, that the bodies of such offenders should be dragged naked through the streets of the city; the shame whereof stopped the course of that mad resolution.

It is not the heaviest of crosses, or the sharpest bodily anguish that can warrant so foule an act. Well was it turned off by *Antisthenes* of old, when in the extremity of his paine he cried out; Oh who will free me from this torment! and *Diogenes* reach't him a poynard, wherewith to dispatch himselfe: Nay, said he, I said, from my torment, not from my life: as well knowing it neither ease, nor ease, to part with our selves upon such termes.

Farre, farre be it from us to put into this ranke and file those worthy Martyrs, which in the fervor of their holy zeale have put themselves forward to martyrdom, and have cou-

rageouſly prevented the luſt and fury of Tyrans, to keep their chaſtity, and faith inviolable. I looke upon theſe as more fit objects of wonder, then either of cenſure, or imitation. For theſe (whom we may well match with *Sampſon*, and *Eliſar*) what Gods ſpirit wrought in them, he knowes that gave it; Rules are they by which we live, not examples.

Secondly, However we may not by any meanes directly act to the cutting off the thred of life; yet I cannot but yeeld with learned * *Leſſius*, that there may fall out caſes, wherein a man may (upon juſt cauſe) doe, or forbear ſomething whereupon death may indirectly enſue: Indirectly, I ſay, not with an intention of ſuch iſſue. For it is not an univerſall charge of God, that no man ſhould upon any occaſion expoſe his life to a probable danger; if ſo, there would be

* *Leſſ. de Jure l. 2. c. 9. dub. 6.*

no warre, no trafique ; but onely that he should not causelessly hazard himselfe ; nor with a resolution of wilfull mis-carriage.

To those instances he gives of a souldier that must keep his station, though it cost him life : of a prisoner that may forbear to flee out of prison, though the doors be open : of a man condemn'd to dye by hunger, in whose power it is to refuse a sustenance offered : of a man that latches the weapon in his own body to save his Prince : or of a friend, who when but one loafe is left to preserve the life of two, refraines from his part and dyes first : or that suffers another to take that planke in a shipwrack which himselfe might have preposessed, as trusting to the oares of his armes ; or that puts himselfe into an infected house out of mere charity to tend the sick, though he know the contagion deadly ; or in a sea-fight blowes

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blowes

blowes up the deck with gunpowder, not without his owne danger; or when the house is on fire casts himselfe out at the window with an extreame hazard: To these, I say, may be added many more; as the cutting off a limb to stop the course of a Gangrene; to make an adventure of a dangerous incision in the body, to draw forth the Stone in the bladder, the taking of a large dose of opiate pills, to ease a mortall extremity; or lastly, when a man is already seized on by death, the receiving of some such powerfull medicine, as may facilitate his passage (the defect of which care and art, the eminently-learned Lord * *Verulam* justly complains of in Physicians:) In these, and the like cases, a man may lawfully doe those things which may tend, in the event, to his own death, though without an intention of procuring it.

* *ἑυδαγία*. L. *Verulam*. Advanc. of Learning.

And unto this head must be referred those infinite examples of deadly sufferings for good causes, willingly embraced for conscience sake. The seven Brethren in the *Maccabees*, (alluded to by *S. Paul* to his *Hebrews*, *Heb. 11. 35.*) will and must rather endure the butchering of their owne flesh, then the eating of swines-flesh, in a willing affront of their law; *Daniel* will rather die then not pray. *Shadrash*, *Mesbach*, and *Abednego* will rather fall downe bound into the fiery Fornace sevenfold heated, then fall downe before the golden image.

And every right-disposed Christian will rather welcome death then yeeld to a willing act of Idolatry, rebellion, witchcraft: If hereupon death follow by the infliction of others, they are sinfull agents, he is an innocent sufferer.

As for that scruple among our *Casuists*, whether a man condemned to dye

dye by poyson, may take the deadly draught that is brought him; it is such, as wise *Socrates* never made of old, when the *Athenians* tendered him his hemlock; and indeed it may as well be disputed, whether a man condemned to dye by the axe, may quietly lay downe his head upon the block; and not, but upon force, yeeld to that fatall stroke. A juster scruple is, whether a man condemned to a certaine and painfull death, which he cannot possibly eschew, may make choice rather of a more easie passage out of the world; wherein I marvell at the indulgence of some Doctors that would either excuse, or mince the matter. For although I cannot blame that naturall disposition in any creature, to shrink from paine, and to affect (what it may) the shifting from extremity of miserie: yet for a Christian so to doe it, as to draw a greater mischief to himselfe,

selfe, and an apparent danger to his soule, it cannot justly beare any other then a hard construction. For thus to carve himselfe of justice, is manifestly to violate lawfull authority; and whiles he would avoid a short paine, to incurre the shame and sin of a selfe-executioner.

But if in that way, wherein the doome of death is passed, a man can give himself ease, or speed of dissolution (as when a Martyr being adjudg'd to the fire, uses the help of a bag of Gun-powder, to expedite his passage) it cannot bee any way judged unlawfull: The sentence is obeyed, the execution is accordingly done; and, if the patient have found a shorter way to that end which is appointed him, what offence can this be either to the law, or to the Judge?

RESO-

little and an opponent changed to his
 right, then again to his left, and
 then a hard one. It was
 to avenge the death of his son,
 who had been killed in the
 battle of the Marston, and
 who had been a knight of the
 Order of the Garter.

But it is in that way, where the
doom of death is passed, a man can
find the light of life, and the
light of life is the light of the
world. And the light of the world
is the light of the world. And the
light of the world is the light of
the world. And the light of the
world is the light of the world.



RESOLUTIONS.

The third Decade.

Cases of Piety and Religion.

CASE I.

*Whether upon the appearance of Evil
Spirits we may hold discourse with
them; and how we may demean our
selves concerning them.*

THat there are evil spirits,
is no less certain then
that there are men:
None but a Sadducee, or
an Atheist can make
question of it.

That evil spirits have given cer-
taine

taine proofes of their presence with men, both in visible apparitions, and in the possessions of places, and bodies, is no lesse manifest, then that we have soules, whereby they are discerned.

Their appearances are not wont to be without grievous inconveniences; whether in respect of their dreadfulness; or their dangerous insinuations.

It is the great mercy of the God of spirits that he hath bound up the evill Angels in the chaines of darkness, restraining them from those frequent, and horrible appearances which they would otherwise make to the terrour, and consternation of his weake creatures.

Whensoever it pleaseth the Almighty, for his owne holy purposes, so farre to loosen, or lengthen the chaines of wicked spirits, as to suffer them to exhibit themselves in some assumed

assumed shapes unto men, it cannot but mainly import us to know, what our deportment should be concerning them. Doubtlesse to hold any faire termes of commerce, or peace (much more of amitie or familiarity) with them, were no better then to professe our selves enemies to God; for such an irreconcilable hostility there is betwixt the holy God, and these malignant spirits, that there can be no place for a neutrality in our relation to them: so as he is an absolute enemy to the one, that bids not open defiance to the other.

As therefore we are wont by our silence to signifie our heart-burning against any person (in that we abide not to speake unto those whom we hate,) so must we carry our selves towards evill spirits: And if they beginne with us as that Devill did in the Serpent with *Eve*; how unsafe and deadly it may be to hold chat
with

with them, appears in that first example of their onset; the issue whereof brought misery, and mortality upon all mankind; yet then, were our first parents in their innocency, and all earthly perfection: we now so tainted with sin, that Satan hath a kinde of party in us, even before his actuall temptations.

As therefore we are wont to say that the fort that yeelds to parle is halfe won; so may it prove with us, if we shall give way to hold discourse with wicked spirits, who are farre too crafty for us to deale withall: having so evident an advantage of us, both in nature (we being flesh and blood, they spirituall wickednesses) and in duration, and experience, we being but of yesterday, they coetaneous with the world and time it selfe.

If you tell me that our Saviour himselfe interchanged some speeches with the spirits whom he ejected; it is
is

is easily answered, that this act of his was never intended for our imitation ; sith his omnipotence was no way obnoxious to their malice, our weaknesse is.

I cannot therefore but marvell at the boldnesse of those men who professing no small degree of holinesse, have dared to hold familiar talk with evill spirits, and could be content to make use of them for intelligence ; as the famous Jesuite, in our time, *Pere Cotton* ; who having provided 50. questions to be propounded to a *Demoniack* (some concerning matters of learning, some other matters of State, concerning the then French King and the King of *England*) and having them written downe under his owne hand to that purpose ; being questioned concerning it, answered, that he had licence from *Rome* to tender those demands : as I received it upon certaine relation from the learned

learned Dr. *Tilenus* with many pregnant and undeniable circumstances, which I need not here expresse. Although this need not seeme strange to me, when I find that * *Navarre* determines plainly, that when evill spirits are present (not by our invocation) as in possessed bodies, it is lawfull to move questions to them, (so it be without our prayers to them, or pact with them) for the profit of others; yea thus to confer with them, even out of vanity, or curiosity, is but venial at the most: Thus he: with whom † *Lessius* goes so far as to say; *Licetum est petere verbo à Diabolo ut nocere destinat &c.* It is lawfull to move the Devill in words to cease from hurting, so that it be not done by way of deprecation, or in a friendly compliance, but by way of indignation: A distinction which I confesse past the ca-

* *Navarr. Enchir. cap. 11. n. 28.* † *Less. l. 2. De magia cap. 44. dub. 6.*

paciry of my apprehension; who have not the wit to conceive how a man can move without implying a kinde of suite; and how any suit can consist with an indignation.

It favours yet of a more heroicall spirit which the Church of *Rome* professeth to teach and practice, the ejection of evill spirits by an imperious way of command; having committed to her Exorcists a power of Adjuration, to which the worst of Devils must be subject; a power more easily arrogated then really exercised: Indeed this over-ruling authority was eminently conspicuous, not onely in the selected twelve, and the seventy Disciples of Christ, who returned from their Embassie with joy, (*Luk.* 10. 17.) that the Devils were subject to them through his name, but even in their holy Successors of the Primitive Church, whiles the miraculous gifts of the holy Ghost were sensibly powered

red out upon men; but if they will be
 stil challenging the same power; why
 doe they not as wel lay claime to the
 speaking of strange tongues? (*Mar.*
16. 17. 18.) to the super-naturall cure
 of all diseases? to the treading on
 serpents and scorpions? to the drink-
 ing of poysons without an Antidore?
 and if they must needs acknowledge
 these faculties above their reach, why
 doe they presume to divide the Spi-
 rit from it selfe; arrogating to them-
 selves the power of the greatest
 workes, whiles they are professedly
 defective in the least? wherein surely,
 as they are the true successors of the
 sonnes of *Sceva*, *Act. 19. 13, 14, 15,*
16. who would be adjuring of Devils
 by the name of *Iesus*, whom *Baul*
 preached, so they can looke for no
 other intertainment then they found
 from those *Demoniacks*, which was
 to be baffled, and beaten, and woun-
 ded. *Yea* *Mark 16. 17.* *Yea* *Mark 16. 17.*
 Especially,

Especially, if we consider the foule superstition, and grosse magick which they make use of in their Conjurations ; by their owne vainly-devised Exorcismes, feoffing a supernaturall vertue upon drugges , and herbes, for the dispelling, and staving off all evill spirits ; Because the bookes are not perhaps obvious, take but a taste in one, or two : * In the *treasure of Exorcismes*, there is this following Benediction of Rue, to be put into an hallowed paper , and to be carried about you and smelled at for the repelling of the Invasion of Devills †. I conjure thee ô thou creature of Rue, by the holy Lord, the Father, the almighty and eternall God , which bringeth forth grasse in the moun-

* *Theſaurus Exorcismorum ; atque Conjuratiomm terribilium, &c. Tract. Dispersio demonum. Fratri Valerii Polydori Patavini. Ord. Minorum Conventualium.* † Tit. applicabile. 3. *Rutæ in charta benedicta super seportanda & olfacienda, ad omnem invasionem diabolicam repellendam.*

taines, and herbs for the uſe of man: And which by the Apoſtle of thy Sonne our Lord Jeſus Chriſt, haſt taught, that the weake ſhould eat herbes: I conjure thee that thou be bleſſed, and ſanctified to retaine this inviſible power and vertue, that whoſoever ſhall carry thee about him, or ſhall ſmell to thee, may be free from all the uncleannesse of Diabolicall inſatuation; and that all Devils, and all witchcrafts may ſpeedily fall from him, as herbes or graſſe of the earth: through the ſame our Lord Jeſus Chriſt, which ſhall come to judge the quick and the dead, and the world by fire. The like is preſcribed to be done to the ſeeds of *Hypericon* or *S. Johns wort*.

* Adde to this, the horrible fumigation to this purpoſe as it followes. I conjure thee ô thou creature of

* Applicabile. 15. Tit. *Profumigatio horribilis, ejusque vulgata benedictio.*

Galbanum,

Galbanum, Sulphur, Assa fatida, Aristolochium, hypericon and *Rue*, by the + living God; by the + true God &c. by Jesus Christ &c. that thou be for our defence; and that thou be made a perpetuall fumigation, exorcised, + blessed, and consecrated to the safety of us, and of all faithfull Christians; and that thou be a perpetuall punishment to all malignant spirits, and a most vehement, and infinite fire unto them, more then the fire and brimstone of hell is to the infernall spirits there, &c.

But what doe I trouble you with these dreadfull incantations, whereof their allowed bookes of Conjuratiō are full? To these I may adde their application of holy water, (wherein they place not a little confidence) which (saith * *Lessius*) receives the force from the prayers of the Church, by the meanes whereof it comes to

* Less. ubi supra Dubit. 3^a.

pasſe, that it is aſſiſted with divine power; which (as it were) reſts upon it, and joynes with it, to the averting of all the infeſtations of the Devil: But faine would I learne where the Church hath any warrant from God to make any ſuch ſuit; where any overture of promiſe to have it granted? what is their prayer without faith? and what is their faith, without a word? But I leave theſe men (together with their Croſſes, and Ceremonies, and holy reliques, wherein they put great truſt in theſe caſes) to their better informed thoughts. God open their eyes that they may ſee their errors.

For us, what our demeanure ſhould be in caſe of the appearance, or moleſtation of evill ſpirits, we cannot deſire a better patterne then *S. Paul*; his example is our all ſufficient inſtruction; *2 Cor. 12. 7, 8.* who when the meſſenger of Satan was ſent to buffet

buffet him, fell presently to his prayers ; and instantly besought God thrice, that it might depart from him. Lo he that could command evil spirits out of the bodily possession of others ; when it comes to his owne turne to be buffeted by them, betakes himselfe to his prayers to that God whose grace was sufficient for him : *Verse. 9.* To them must we still have our recourse ; if we thus resist the Devil he shall flee from us : *Jam. 4. 7.* In the primitive times, those that could command, needed not to fast: and therefore fasting and prayers was an higher (as a more laborious) work (to this purpose) in the disciples, then their imperative course of ejection ; but for us, we that have no power to bid, must pray ; Pray ; not to those ill guests that they would depart ; not to the blessed Virgin, or our Angel Keeper that they would gard us from them, but to the great God of heaven,

who commands them to their chains: This is a sure and everlasting remedy, this is the onely certaine way to their foile, and our deliverance, and victory.

CASE II.

How farre a secret pact with evill spirits doth extend, and what actions and events must be referred thereunto.

IT is a question of exceeding great use, and necessity; for certainly many thousands of honest, and well-minded Christians are in this kinde drawne into the snares of Satan, unwarily, and unwittingly: For the determining of it, these two grounds must be laid; First, that there is a double compact with Satan; One direct and open; wherein Magicians and witches, upon wofull conditions, and

and direfull ceremonies, enter into a mutuall covenant with evill spirits: The other, secret and indirect; wherein nothing is seen, or heard, or known to be agreed upon; onely by a close implication, that is suggested and yeelded to be done, which is invisibly seconded by diabolically operation.

The second ground is; that whatsoever hath not a cause in nature according to Gods ordinary way, must be wrought either by good, or evill spirits: That it cannot be supposed that good Angels should be at the command of ignorant, or vicious persons, of either sexe, to concur with them in superstitious acts, done by meanes altogether in themselves ineffectuall and unwarrantable: and therefore that the Devill hath an un-seene hand in these effects, which he marvailously brings about, for the winning of credit with the world, and for the obliging and engaging of his

owne clients : of this kinde there is too lamentably-much variety in common experience : Take an handfull, if you pleaſe, out of a full ſack : let the firſt be, that authentique charme of the Goſpell of S. *John* allowed in the parts of the Romiſh correſpondence ; wherein the firſt verſes of that divine Goſpell are ſingled out, printed, in a ſmall roundell, and ſold to the credulous ignorants, with this fond warrant, that whoſoever carries it about him ſhall be free from the dangers of the dayes miſ-happes : The booke and the key ; the ſive and the ſheeres, for the diſcovery of the theefe ; The noching of a ſtick with the number of the warts which we would have removed ; the rubbing of them with raw fleſh, to be buried in a dunghill that they may rot away inſenſibly therewith, or waſhing the part in moone-ſhine for that purpoſe : words, and characters, of no ſignification,

cation, or ordinary forme, for the curing of diseases in man, or beast; more then too many whereof we find in *Cornelius Agrippa*, and *Paraelsus*.

Formes of words and figures for the stanching of blood; for the pulling out of thornes, for easing paine, for remedying the biting of a mad dog.

Amulets made up of reliques, with certaine letters and crosses, to make him that weares them, invulnerable.

Whistling for a winde wherewith to winnow; as it is done in some ignorant parts of the west.

The use of an holed flint, hanged up on the rack, or beds head, for the prevention of the night-mare in man, or beast.

The judging by the letters of the names of men or women, of their fortunes, as they call them; according

ding to the serious fopperies of *Ar-*
candam.

The seventh sonnes laying on of hands for the healing of diseases; The putting of a verse, out of the *Psalmes*, into the vessell, to keep the wine from sowing; The repeating of a verse out of *Virgil* to preserve a man from drunkenness all that day following; Images astronomically framed under certaine constellations to preserve from severall inconveniences; as under the signe of the Lion the figure of a Lion made in gold, against melancholick fancies, dropsie, plague, fevers: which *Lessius* might well marvell how *Cajetan* could offer to defend; when all the world knowes how little proportion and correspondence there is betwixt those imaginary signes in heaven, and these reall creatures on earth.

Judiciary Astrology, as it is commonly practised, whether for the
casting

casting of nativities, or prediction of voluntary, or civill events; or the discovery of things stolen or lost: for, as the naturall Astrology when it keepes it selfe within its due bounds is lawfull, and commendable, (although not without much uncertainty of issue;) so that other Calculatory, or figure-casting Astrology is presumptuous and unwarrantable; cryed ever downe by Councells and Fathers, as unlawfull; as that which lies in the mid-way betwixt magick, and imposture, and partakes not a little of both.

The anointing of the weapon for the healing of the wound, though many miles distant; wherein (how confident soever some intelligent men have beene) doubtlesse there can be nothing of nature; sith in all naturall agencies, there must necessarily be a contraction either reall, or virtuall; here in such an intervall, none can be:

be : neither can the efficacy be ascribed to the salve ; since some others have undertaken and done the cure, by a more homely and familiar ointment ; It is the ill bestowed faith of the agent that drawes on the successe from the hand of an invisable physician.

Calming of tempests, and driving away devills by ringing of belles, hallowed for that purpose.

Remedy of witcheries, by heating of Irons, or applying of crosses. I could cloy you with instances of this kinde ; wherewith Satan beguiles the simple upon these two mis-grounded principles ; 1. That in all experience they have found such effects following upon the use and practise of such meanes ; which indeed cannot be denied : Charms and spells commonly are no lesse unfailing in their working, then the best naturall remedies ; doubtlesse, the Devill is a most skillfull

full Artist: and can doe seates beyond all mortall powers; but God blesse us from imploying him: 2 *King.* 1.3. Is it not because there is not a God in *Israel* that we goe to enquire of *Baalzebub* the God of *Eckron*?

2. That there may be hidden causes in nature for the producing of such effects which they know not; neither can give any reason of their operations; whereof yet we doe commonly make use, without any scruple; and why may not these be ranged under the same head? which they have used with no other but good meaning; without the least intention of reference to any malignant powers; In answer whereto, I must tell them, that their best plea is ignorance; which may abate the sin, but not excuse it: There are indeed, deep secrets in nature, whose bottome we cannot dive into; as those wonders of the load-stone; a peece outwardly contemptible.

contemptible, yet of such force as approacheth neare to a miracle: and many other strange sympathies and antipathies in severall creatures; in which ranke may be set the bleeding of the dead at the presence of the murtherer: and some acts done for the discovery of witchcraft both in this, and our neighbor kingdom; But withall, though there be secrets in nature which we know not how she workes; yet we know there are works which are well knowne, that she cannot do: how far her power can extend is not hard to determine: and those effects which are beyond this, (as in the fore-mentioned particulars) wee know whither to ascribe: Let it be therefore the care and wisdom of Christians to looke upon what grounds they goe: whiles they have God, and nature for their warrant, they may walke safely; but where these leave them, the way leads

leads downe to the chambers of death.

CASE III.

Whether reserving my conscience to my selfe I may be present at an Idolatrous devotion; or whether in the lawfull service of God I may communicate with wicked persons.

THE question is double: both of them of great importance; The former I must answer negatively; your presence is unlawfull upon a double ground; of sin, and of scandall: of sin, if you partake in the Idolatry; of scandall, if you doe but seeme to partake: The scandall is threefold; you confirme the offenders in their sin; you draw others by your example into sin; you grieve the spirits of those wiser Christians, that are the sad witnesses of your offence.

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The great Apostle of the Gentiles (1 Cor. 8. 4, 5, 6, 7, 8, 9, 10.) hath fully determined the question in a more favourable case: The heathen sacrifices were wont to be accompanied (in imitation of the Jewish, prescribed by God himselfe) with feasts; the owners of the feast civilly invite the neighbours (though Christians) to their banquets; The Tables are spread in their Temples; The Christian guests out of a neighbourly society, goe, sit, eate with them: *S. Paul* cries downe the practice, as utterly unlawfull: yet this was but in matter of meat; which sure was Gods, though sacrificed to an Idoll; how much more must it hold in rites and devices, meerly, either humane, or devilish?

I need not tell you of the Christian Souldiers in the Primitive Persecution, who when they found themselves by an ignorant mistaking drawne, under

under a pretence of loyalty, into so much ceremony as might carry some semblance of an Idolatrous thrification, ran about the City in an holy remorse, and proclaimed themselves to be Christians : Nor how little it excused *Marcellinus* Bishop of *Rome*, from an heavy censure, that he could say he did but for company cast a few graines of incense into the fire. The charge of the Apostle (1 *Thes.* 5. 22.) is full, and peremptory, that we should abstaine from every appearance of evill.

It is a poore plea that you mention of the example of *Naaman*. Alas, an ignorant pagan : whose body if it were washed from his leprosie, yet his soule must needs be still foule : 2 *Kings* 5. 17, 18, 19. yet even this man will thenceforth offer neither burnt offering, nor sacrifice unto any other God, but unto the Lord ; nor upon any ground but the Lords peculiar ;

culiar; and will therefore lade two Mules with Israelitish earth; and is now a professed convert: Yea, but he will still bow in the Temple of *Rimmon*: But how will he bow? Civilly onely, not religiously; In the house of *Rimmon*, not to the Idol; Not in relation to that false deity, but to the King his master: you shall not take him going alone under that Idolatrous roofe; but according to his office, in attendance of his Sovereign: nor bowing there, but to support the arme that lean'd upon him: And if upon his returne home from his journey he made that solemne protestation to his Syrians, which he before made to the Prophet: Take notice ô all ye Courtiers, and men of *Damascus*, that *Naaman* is now become a proselyte of *Israel*; that he will serve and adore none but the true God; and if you see him at any time kneeling in the temple of your Idol
Rimmon,

Rimmon, know that it is not done in any devotion to that false God, but in the performance of his duty and service to his royall master; I see not but the Prophet might well bid him, *Goe in Peace*. How ever that ordinary and formall valediction to a *Syrian*, can be no warrant for a Christians willing dissimulation.

It is fit for every honest man to seeme as he is; what do you howling amongst Wolves, if you be not one? Or what do you amongst the Cranes, if you be a Storke? It was the charge of *Jehu*, when he pretended that great sacrifice to *Baal*; Search, and looke that there be here with you none of the servants of the Lord, (2 *King*. 10. 23.) but the worshippers of *Baal* onely: surely had any of Gods clients secretly shrouded himselfe amongst those Idolaters, his blood had beene upon his owne head: Briefly then, if you have a minde to keep your selfe
in

in a safe condition for your soule, let me lay upon you the charge which *Moses* enforced upon the congregation of *Israel* in the case of *Corahs* insurrection, *Depart I pray you from the tents of these wicked men, and touch nothing of theirs, lest ye be consumed in all their sinnes.* Num. 16. 26.

The latter I must answer affirmatively : If the ordinances be holy, why should not you take your part of them ?

It is an unjust nicenesse to abridge your selfe of a blessing, for another mans unworthiness: Doubtlesse, there ought to be a seperation of the precious from the vile ; the neglect whereof is the great sinne of those, whom in duty it concerns to performe it ; but where this is not accordingly done, shall I suffer for anothers offence ? my owne finnes may justly keepe me off from Gods Table ; if another mans may doe so too, I appropriate
the

the guilt of his sin to my own wrong: surely it argues but small appetite to these heavenly viandes, if you can be put off with a pretence of others faults: Judge of the spirituall repast by this earthly; were you thoroughly hungry, would you refrain from your meat because one of the guests hath a paire of foule hands: that may be a just eye-sore to you, but no reason why you should forbear wholesome dishes: Carve you for your selfe, and looke to your owne trencher; he feeds for himselfe, not for you; sin is the uncleannesse of the soule; that cleaves closer to it, then any outward nastinesse can to the skin; to feed thus foule then is doubtlesse unwholsome, to himselfe, it can be no hurt to you. But you are ready to straine the comparison higher to your owne advantage: say, that one of the guests hath a plague-sore running upon him, shall I then thinke it safe

safe to sit at the Table with him : now sin is of a pestilent nature, spreading its infection to others besides its owne subject ; therefore it is meet we keep aloofe from the danger of his contagion : True, there are sinnes of a contagious nature, apt to diffuse their venome to others, (as there are other some whose evill is intrinsecall to the owner) but these infect by way of evill counsailes, or examples, or familiar conversation, not by way of a meere extemporary presence of the person, by spreading of their corruption to those that are taken with them ; not by scattering abroad any guilt to those that abhorre them. Well did our Saviour know how deadly an infection had seised on the soule of *Judas*, yet he drives him not from his board, lest his sinne should taint the disciples.

The spirit that writes to the seven *Asian Churches* (*Rev. 2. 20, 21, 22.*)

saw

saw and professed to see the horrible infection spread amongst the *Thyattirians* by the doctrine and wicked practises of their *Jesebel*, yet all that he enjoynes the godly party is to hold their owne.

Have no fellowship, saith the Apostle, *with the unfruitfull workes of darknesse*: (*Ephes. 5. 11.*) Loe he would not have us partake in evill: he doth not forbid us to partake with an evill man in good workes.

However therefore we are to wish and indeavour (in our places) that all the congregation may be holy; and it is a comfortable thing to joine with those, that are truly conscionable, and carefully observant of their wayes, in the immediate services of our God: yet where there is neglect in the overseers, and boldnesse in the intruders, and thereupon, Gods sacred Table is pestred with some unworthy guests; it is not for you, upon this ground,

to

to deprive your selfe of the benefit of Gods blessed Ordinances ; notwithstanding all this unpleasing encombrance you are welcome, and may be happy.

CASE IV.

Whether Vowes be not out of season now under the Gospell; of what things they may be made ; how farre they oblige us ; and whether and how far they may be capable of release.

IT is a wrongfull imputation that is cast upon us by the Roman Doctors, that we abandone all vowes under the Gospell : They well see that we allow and professe that common vow (as *Lesius* termes it) in Baptisme ; which yet both *Bellarmino*, and he, with other of their consorts, deny to be properly such : It is true, that as infants make it by their proxies,

proxies, there may seeme some impropriety of the ingagement as to their persons; but if the party Christened be of mature age, the expresse vow is made absolutely by, and for himselfe. Besides this we allow of the renovation of all those holy vowes, (relating to the first) which may binde us to a more strict obedience to our God; yet more, though we doe not now allow the vowes of things in their nature indifferent, to be parts of Gods worship, (as they were formerly under the law) yet we doe willingly approve of them, as good helps and furtherances to us, for the avoiding of such sinnes as we are obnoxious unto; and for the better forwarding of our holy obedience.

Thus, the charge is of eternall use, Psal. 76. 11. *Kneele unto God and performe it*: Not that we are bound to vow; that act is free and voluntary:

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but

but that when we have vowed, we are straightly bound to performance: It is with us for our vowes as it was with *Ananias*, and *Saphira* for their substance, Whiles it remained (saith *S. Peter*) was it not thine own? (*Act.* 5. 4.) He needed not to sell it, he needed not to give it; but if he will give, he may not reserve: If he profess to give all, it is death to save some; he lyes to the holy Ghost, that defalkes from that which he engaged himselfe to bestow.

It mainly concernes us therefore to looke carefully in the first place, to what we vow; and to our intentions in vowing; and to see that our vow be not rash and unadvised; of things either triviall, or unlawfull, or impossible, or out of our power to performe; for every vow is a promise made to God; and to promise unto that great and holy God, that which either we cannot, or ought not to doe, what

what is it other then to mock and abuse that Sacred Majesty ; which will not hold him guiltlesse that taketh his name in vaine : It is the charge to this purpose of wise *Solomon* ; *Be not rash with thy mouth ; and let not thine heart be hasty to utter any thing before God ; for God is in heaven ; and thou upon earth , therefore let thy words be few . Ecclef. 5. 2 .*

Your vow therefore must be either of things morally good ; for the quickening you in that duty which you are bound to doe : or of things indifferent in themselves, the refraining, or doing whereof may tend either to the restraint from sin, or the furtherance of your holy obedience : As a man that finds his brains weake, and his inclination too strong to pleasing liquor, bindes himselfe by a vow to drinke no wine save onely at Gods table : or a man that findes himselfe apt to be mis-carried by his appetite,

confines himselfe by his vow to one dish ; or to one meale for the day : or a man that finds himselfe given to the pleasure of gaming, to the losse of his time , and the weakning of his estate , curbes himselfe by his vow never to play for money : or a man that findes his prayers weake, and his flesh rebellious, vowes to tame his unruly desires, and to stir up his duller devotions, by fasting.

And as the matter of your vow must be carefully regarded ; so also your intentions in vowing ; for if you vow to doe good to an ill end, your thanke is lost, and danger of judgement incurred : as if you vow to give almes for vaine glory, or ostentation : or, if God shall prosper your usurious, or monopolizing project, you will build an hospitall; your vow is like to be so accepted, as the story tells us, the prayers were, of that bold *Curtizan*, who comming to the shrine
of

of S. Thomas of * Canterbury (as that traitour was stiled) devoutly begd, that through the intercession of that Saint, she might be graced with so winning a beauty, that might allure her paramours, to a gainfull courting of so pleasing a mistresse; when suddenly (as my author tells me) she was stricken blinde: and certainly, so it might well be; for if a supposed Saint were invoked, it was God that was highly provoked by the sinfull petition of a shamelesse harlot: and it was most just for him to revenge it; and so we may well expect it shall be with whosoever shall dare to make use of his sacred name to their owne wicked or unwarrantable purposes.

Since therefore our vowes must be for their matter (as Casuists well determine) *De meliore bono*, and for intentions, holy and directed onely to good; it plainly appeares that many

* Beatificed, sum. predict.

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idle purpoſes, promiſes, reſolutions are wont to paſſe with men for vows, which have no juſt claime to that holy title: One ſaies he vowes never to be friends with ſuch a one that hath highly abuſed him; another, that he will never come under the rooſe of ſuch an unkinde neighbour: one that he will drinke ſo many healths to his honoured friend; another that he will not give the wall or the way to any paſſenger: one that he will never weare ſuit but of ſuch a colour; another that he will never cut his haire till ſuch an event; Theſe, and ſuch like may be fooliſh, unjuſt, ridiculous ſelfe-ingagements; but vows they are not; neither therefore doe binde the conſcience otherwiſe then as *Sampſons* cords, and withes, which he may breake as a thred of ſowe. *Judg. xvi. 9. 12.*

But as for true vows; certainly they are ſo binding, that you ſhall ſin
hainouſly

hainously in not performing them: It is no better then dishonesty to faile in what we have promised to men; but to disappoint God in our vowes, is no lesse then sacriledge: That of *Solomons* is weighty; *Eccles.* 5. 4, 5, 6. *When thou vowest a vow unto God, deferre not to pay it, for he hath no pleasure in fooles; pay that which thou hast vowed: Better it is that thou shouldst not vow; then that thou shouldst vow and not pay it: Suffer not thy mouth to cause thy flesh to sin; neither say before the Angel that it was an error; wherefore should God be angry at thy voice, and destroy the work of thine hands? If therefore a lawfull and just vow have passed your lips, you may not be false to God, and your selfe in not keeping it.*

But if it shall so fall out, that there proves to be some maine inconvenience or impossibility in the fulfilling of this your solemne promise unto

idle purpoſes, promiſes, reſolutions are wont to paſſe with men for vows, which have no juſt claime to that holy title: One ſaies he vowes never to be friends with ſuch a one that hath highly abuſed him; another, that he will never come under the rooſe of ſuch an unkinde neighbour: one that he will drinke ſo many healths to his honoured friend; another that he will not give the wall or the way to any paſſenger: one that he will never weare ſuit but of ſuch a colour; another that he will never cut his haire till ſuch an event; Theſe, and ſuch like may be fooliſh, unjuſt, ridiculous ſelfe-engage-ments; but vows they are not; neither therefore doe binde the conſcience otherwiſe then as *Sampſons* cords, and withes, which he may breake as a thred of ſowe. *Jdg. 16. 9. 12.*

But as for true vows, certainly they are ſo binding, that you ſhall ſin hainouſly

hainouſly in not performing them: It is no better then diſhoneſty to faile in what we have promiſed to men; but to diſappoint God in our vowes, is no leſſe then ſacriledge: That of *Solomons* is weighty; *Eccleſ. 5. 4, 5, 6.* When thou voweſt a vow unto God, deferre not to pay it, for he hath no pleaſure in ſooles; pay that which thou haſt vowed: Better it is that thou ſhouldeſt not vow; then that thou ſhouldeſt vow and not pay it: Suffer not thy mouth to cauſe thy fleſh to ſin; neither ſay before the Angel that it was an error; wherefore ſhould God be angry at thy vow, and deſtroy the work of thine hands? If therefore a lawfull and juſt vow have paſſed your lips, you may not be falſe to God, and your ſelfe in not keeping it.

But if it ſhall ſo fall out, that there proves to be ſome maine inconveni-
ence or impoſſibility in the fulfilling
of this your ſolemnne promiſe unto
God,

God, whether through the extreme prejudice of your health, and life, or the overſwaying difficulty of the times what is to be done ; ſurely as under the law (*Num.* 30. 3, 4, 5.) it was left in the power of the parent to over-rule the vow of the childe, ſo I doubt not but under the Goſpell, it is left in the power of your ſpirituall fathers , to order, or diſpenſe with the performance of thoſe vowes , which you would, but cannot well fulfill : neither was it ſpoken in vaine, nor in matter of ſins onely, which our Saviour in way of authorization, ſaid to his Apoſtles and their ſucceſſours, *Whatſoever yee ſhall bind on earth, ſhall be bound in heaven, and whatſoever yee ſhall looſe on earth ſhall be looſed in heaven.* *Mat.* 18. 18. In this caſe therefore, I ſhould adviſe you to make your addreſſe to your ſpirituall paſtor, and freely to lay open your condition before him , and humbly to ſubmit
your

your selfe to his fatherly directions in that course which shall be found best and safest for your soule: Thinke it not safe in a businesse of so high nature to relye upon your owne judgment, and to carve out your own satisfaction; but regard carefully what God hath said of old, *The priests lippes should keep knowledge: and they should seeke the law at his mouth: for he is the messenger of the Lord of hosts.* Mala. 2.⁷.

CASE V.

Whom may we justly hold an Heretick; and what is to be done in the case of Heresie?

THere is no one point wherein the Church of God hath suffered more then in the mis-understanding of this question; How many thousand innocents have in these latter

ages of the Church perished in this unhappy quarrell : yea how many famous Churches have beene most unjustly thunderstruck with direfull censures of Excommunication, down to the pit of hell, upon pretence of this crime, which have beene lesse guilty then their Anathematizers : And even amongst our selves, how apt we are to brand one another with this hatefull marke where there is no true merit of such a reproach :

If much imports us therefore to know who may be deservedly thus stigmatized by us : I have elsewhere somewhat largely insisted on this theme ; whither I might spare some lines to referre you ; But, in short, thus : To let passe the originall sense, and divers acceptions of the word ; An heresie is no other then an obstinate errorr against the foundation ; All truthe is precious, but some withall necessary ; All errorrs are faulty,

faulty, but some damnable; the hay-nousnesse of the error is according to the worth of the truth impugned; There are Theologicall verities fit for us to know and beleeve; there are Articles of Christian faith needfull to be known and beleaved; There are truths of meet and decent superstructure, without which the fabrick may stand; there are truths of the foundation so essentiall, as that without them it cannot stand: It is a maim to the house if but a tile be pull'd off from the roofe, but if the foundation be razed, the building is overthrowne: this is the endeavour and act of heresie.

But now the next question will be, what doctrines they are which must be accounted to be of the Foundation; Our countreyman *Fisher* the Jesuite, and his Associates will tell you roundly, that all those things which are defined by the Church to be beleaved,

ved, are * fundamentall : A large groundworke of faith : Doubtlesse the Church hath defined all things contained in the scripture, to be beleevd ; and theirs (which they call Catholick) hath defined all those Traditionall points which they have added to the Creed, upon the same necessity of salvation to be beleevd ; now if all these be the foundation, which is the building : what an imperfect fabrick doe they make of Christian Religion ; all foundation, no walls, no roose : Surely it cannot, without too much absurdity, be denied, that there is great difference of Truthes, some more important then others ; which could not be, if all were alike fundamentall : If there were not some speciall Truthes, the belcese whereof makes, and distinguisheth a Christian, the authors of the Creed Apostolick (besides the

* Relat. of the third confer. p. 61.

other Symboles received anciently by the Church) were much deceived in their aime : He therefore that beleeves the holy Scriptures (which must be a principle presupposed) to be inspired by God ; and as an abstract of the chiefe particulars thereof, professeth to beleeve and embrace the Articles of the Christian faith, to regulate his life by the law of Gods commandements, and his devotion by the rule of Christ prescribed ; and lastly to acknowledge and receive the Sacraments expressly instituted by Christ; doubtlesse this man is by profession a Christian, and cannot be denyed to hold the foundation ; and whosoever shall wilfully impugne any of these, comes within the verge of Heresie : wilfully, I say ; for meere error makes not an heretick ; if out of simplicity, or grosse ignorance, a man shall take upon him to maintaine a contradiction to a point of faith, being

ing ready to relent upon better light, he may not be thus branded: evicti-
on and contumacy must improve his
error to be hereticall. The Church of
Rome therefore hath beent too cru-
elly-liberall of her censures this way;
having bestow'd this livery upon ma-
ny thousand Christians whom God
hath owned for his Saints: and upon
some Churches more Orthodoxe
then her selfe; presuming upon a
power (which was never granted her
from heaven,) to state new articles of
faith; and to excommunicate and
barre all that shall dare to gainsay her
oracles: Whereas the great Doctor
of the Gentiles hath told us from the
spirit of God, that there is but *one*
Lord, one faith, one baptisme; (Ephes.
4. 5.) and what faith is that? *S. Jude*
tells us: *Jude 3. The faith that was*
once delivered the Saints; so that as
well may they make more reiterati-
ons of Baptisme, and multiplicities
of

of Lords, as more faiths then one : some explications there may be of that one faith, made by the Church, upon occasion of new-sprung errors, but such, as must have their grounds from fore-written truths ; and such, as may not extend to the condemnation of them whom God hath left free : new articles of faith they may not be : nor bind further then God hath reach't them.

Hereticks then they are and onely they, that pertinaciously raze the foundation of the Christian faith ; what now must be done with them ? surely, first, if they cannot be reclaimed, they must be avoided : It is the charge of the beloved disciple to the elect Lady, 2 *John* v. 10. *If any man come unto you and bring not (that is, by an ordinary Hebraisme, opposes) this doctrine, receive him not into your houses, neither bid him God-speed,* But the Apostle of the Gentiles goes yet

yet higher; for writing to *Titus* the great Super-intendent of *Crete*, his charge is, *Tit. 3. 10. A man that is an heretick, after the first and second admonition reject.*

Now, when we compare the charge with the person, we cannot but finde that this rejection, is not a meer negative act, of refraining company; but a positive act of censure; so as he who had power to admonish, had also power to reject in an authoritative, or judicatory way: He sayes then, *Devita*, reject or avoid, not (as *Erasmus* too truly, but bitterly scoffes the Romish practise) *De vita tolle*: This of killing the heretick, as it was out of the power of a spirituall supervisor, so was it no lesse farre from the thoughts of him that desired to come in the spirit of meekness: Fagots were never ordained by the Apostle for arguments to confute hereticks; this bloody Logick and
Divinity

Divinity was of a much later brood ; and is for a *Dominick*, not a *Paul* to owne : for certainly faith is of the same nature with love, it cannot be compelled ; perswasions may move it, not force : These intellectuall sinnes must look for remedies of their own kind ; But if either they be (as it is often) accompanied with damnable blasphemies, against God, whether in his essence, or attributes, or the three incomprehensible persons in the all-glorious Deity, or the blessed mediator betwixt God and man Jesus Christ, in either of his natures ; Or else, shall be attended with the publique disturbances and dangerous distempers of the Kingdome, or State wherein they are broached, the Apostles wish is but seasonable, in both a spirituall and a bodily sense ; *Gal. 5. 12. Would to God those were cut off that trouble you :* In the mean time, for what concernes your self, if you know.

know any ſuch, as you love God, and your ſoules, keepe aloof from them, as from the peſtilence. **Epiphanius* well compares hereſie to the biting of a mad dog, which as it is deadly, (if not ſpeedily remedied) ſo is it withall dangerously infectious; not the tooth onely, but the very foame of that envenomed beaſt carries death in it; you cannot be ſafe, if you avoid it not.

* *Epiphani. hæreſ. l. 1.*

CASE VI.

Whether the laws of men doe bind the conſcience; and how far we are tyed to their obedience.

BOth theſe extreames of opinion concerning this point muſt needs bring much miſchief upon Church and Kingdome: Thoſe that abſolutely hold ſuch a power in humane laws make themſelves ſlaves to men: Thoſe

Those that deny any binding power in them, run loose into all licentiousness: Know then that there is a vast difference betwixt these two; To bind the conscience in any act; and to bind a man in conscience to do or omit an act: Humane laws cannot do the first of them; the latter they may, and must doe: To bind the conscience is to make it guilty of a sin in doing an act forbidden, or omitting an act enjoined as in it selfe such; or making that act in it selfe an acceptable service to God which is commanded by men: Thus humane lawes cannot bind the conscience: It is God only, *1 John 3. 21.* who, as he is greater then the Conscience, so hath power to bind or loose it: *Esay 31. 22.* It is he that is the onely Law-giver to the Conscience: *Jam. 4. 12.* Princes and Churches may make lawes for the outward man; but they can no more bind the heart, then they can
make

make it; In vaine is that power which is not inabled with coercion; now what coercion can any humane power claime of the heart, which it can never attain to know? the spirit of man therefore is subject onely to the father of spirits, who onely sees and searches the secrets of it, and can both convince, and punish it.

Besides, well did penitent *David* know what he said, when he cry'd out: *Against thee onely have I sinned: Psal. 51.* he knew that sin is a transgression of the law; and that none but Gods law can make a sin: men may be concerned, and injured in our actions, but it is God who hath forbidden these wrongs to men, that is sinned against, in our acts of injustice and uncharitableness: and who only can inflict the spirituall (which is the highest) revenge upon offenders. The charge of the great Doctor of the *Gentiles* to his *Galatians*, was,

Gal.

Gal. 5. 1. Stand fast in the liberty wherewith Christ hath made us free; and be not intangled againe in the yoke of bondage. What yoke of bondage was this but the law of Ceremonies? what liberty was this but a freedome from the bondage of that law? And certainly if those ordinances, which had God for their author, have so little power to bind the conscience, as that the yoke of their bondage must be shaken off, as inconsistent with Christian liberty; how much lesse is it to be indured, that we should be the servants of men, in being tyed up to sin by their presumptuous impositions?

The lawes of men therefore doe not, ought not, cannot bind your conscience, as of themselves; but, if they be just, they bind you in conscience to obedience: They are the words of the Apostle to his Romans; *Rom. 13. 5. Wherefore ye must needs be subject*

ject; not onely for wrath, but also for conscience sake. However then their particuler constitution in themselves put no speciall obligation upon us, under paine of sin, and damnation; yet in a generall relation to that God, who hath commanded us to obey authority, their neglect or contempt involves us in a guilt of sin: All power is of God; that which the supreme authority therefore enjoynes you, God enjoynes you by it; the charge is mediately his; though passing through the hands of men.

How little is this regarded, in these loose times, by those lawlesse persons, whose practises acknowledge no soverainety but titular, no obedience but arbitrary; to whom the strongest lawes, are as weapons to the *Leviathan*, who esteemes Iron as straw, and brasse as rotten wood? Job 41.27.

Surely had they not first cast off their obedience to him that is higher

er then the highest, they could not without trembling heare that weighty charge of the great God of heaven, *Rom. 13.1. Let every soule be subject to the higher powers: For there is no power but of God; and the powers that be, are ordained of God: 1 Pet. 2. 13. Submit your selves to every ordinance of man for the Lords sake; and therefore should be convinced in themselves, of that awe, and duty, which they owe to Sovereignty, and know and resolve to obey God in men; and men for God.*

You see then how requisite it is, that you walke in a middle way betwixt that excessive power which flattering Casuists have beene wont to give to Popes, Emperours, Kings, and Princes in their severall jurisdictions; and a lawlesse neglect of lawfull authority: For the orthodox, wise, and just moderation whereof, these last ages are much indebted to
the

the learned and judicious Chancel-
lour of *Paris**, *John Gerson*; who
firſt ſo checked that over-flowing
error of the power of humane uſur-
pation (which carried the world be-
fore it) as gave a juſt hint to ſucceed-
ing times, to draw that ſtream into
the right channell; in ſo much as
† *Dominicus à Soto* complains great-
ly of him, as, in this, little differing
from the *Lutheran* hereſie: But in
the way which they call hereſie, we
worſhip the God of our fathers; ren-
dring unto *Ceſar* the things that are
Ceſars, and unto *God* thoſe things
that are *Gods*; yeelding our bodies to
Ceſar, *Act. 24. 14.* reſerving our ſouls
for *God*: tending to juſt lawes,
our active obedience, to unjuſt, paſ-
ſive.

But in the mean time, farre be it

* *Traſt. de Vit. ſpec. leſt. 4. Cit. Dom. à Soto ur*
infra. † *Gersonis poſitio harum diſtat ab hereſi Luth-*
erana. Dominic. à Soto De Jure, &c. l. 1. qu. 6.

from

from us to draw this knot of our obligation harder, and closer then authority it selfe intends it: What ever Popes may doe for their Decrees, certainly good Princes never meant to lay such weight upon all their lawes as to make every breach of them (even in relation to the authority given them by God) to be sinfull.

Their lawes are commonly shut up with a sanction of the penalty imposed upon the violation: There is an *obedientia bursalis*, (as, I remember, *Gerson*, calls it,) an obedience, if not of the person, yet of the purse; which Princes are content to take up withall: we have a world of sinnes (God knowes) upon us in our houely transgressions of the royall lawes of our maker; but woe were us, if we should have so many sinnes more, as we breake statutes: In penall lawes, where scandall or contempt finde no
L place,

place, humane authority is wont to rest satisfied with the mulct paid, when the duty is not performed.

Not that we may wilfully incurre the breach of a good law, because our hands are upon our purse-strings ready to stake the forfeiture; This were utterly to frustrate the end of good lawes, which doe therefore impose a mulct that they may not be broken; and were highly injurious to soveraigne authority, as if it sought for our money, not our obedience, and cared more for gaine, then good order; then which there cannot be a more base imputation cast upon government: As then we are wont to say in relation of our actions to the lawes of God; that some things are forbidden because they are sinfull, and some things are sinfull because they are forbidden, so it holds also in the lawes of men; some things are forbidden because they are justly offensive;

offensive; and some other things are onely therefore offensive because they are forbidden; in the former of these, we must yeeld our carefull obedience, out of respect even to the duty it selfe; in the latter, out of respect to the will of the law-giver; yet so, as that if our own important occasions shall enforce us to transgresse a penall law, without any affront of authority or scandall to others, our submission to the penalty frees us from a sinfull disobedience.

CASE VII.

Whether Tithes be a lawfull maintenance for Ministers under the Gospel; and whether men be bound to pay them accordingly.

AS the question of *Mine and Thine* hath ever embroyled the world; so this particular concerning Tithes

hath raiſed no little duſt in the Church of God: whiles ſome plead them in the precise (*quota parte*) due and neceſſary to be paid, both by the law of God, and nature it ſelf; others decry them as a Judaicall law, partly Ceremoniall, partly Judiciall; and therefore either now unlawfull, or at leaſt neither obligatory, nor convenient.

What is fit to be determined in a buſineſſe ſo overagitated; I ſhall ſhut up in theſe ten propoſitions.

1. The maintenance of the legall miniſtery allowed and appointed by God was exceeding large and liberall.

Befides all the tithes of corne, wine, oyle, herbes, herds, flocks; they had forty eight cities ſet forth for them, with the fields round about them, to the extent of two thouſand cubits every way: They had the firſt fruits of wine, oyle, wool, &c. in a large
pro-

proportion ; he was held to be a man of an evill eye that gave lesse then the sixtieth part : They had the first born of cattle, sheep, Beeves, goates ; and the price of the rest, upon redemption : even the first-born of men must ransom themselves at five shekels a man ; They had the oblations and vowes of things dedicated to God : They had the ample loaves (or * cakes rather) of shew-bread ; and no small share in meat offerings, sin-offerings, trespass offerings, heave-offerings, shake-offerings ; of sacrifices eucharisticall they had the breast and shoulder ; of other, the shoulder, and the two cheeks ; yea the very burnt-offerings afforded them an hide : Besides all these ; all the males were to appear before the Lord thrice a year ; none were exempted (as their Doctors tell us) but servants, deaf,

* Ten hand breadths long, five broad, seven fingers high.

dumb, idiots, blind, lame, defiled, uncircumcised, old, sick, tender, and weak, not able to travell; and no one of these which came up might appear empty-handed.

What doe I offer to particularize? there were no lesse then twenty-four gifts allotted to the Priests, expressly in the law; the severalls whereof who so desires to see, may finde in the learned and profitable Annotations of Master *Ainsworth**, out of *Maimonides*.

2. We can have no reason to imagine, that the same God who was so bountifull in his provisions for the legall ministry, should bear lesse respect to the Evangelicall; which is farre more worthy and excellent then the other: Justly therefore doth Saint *Paul* argue from the maintenance of the one, a meet proportion for the fit sustentation of the other, 1 *Cor.* 9. 13.

* H. Ainsworth in Lev. 24. 9. ex Maimonide.

3. It is not fit for Gods ministers to be too intent to matter of profit; their main care must be the spirituall proficiency of the soules of their people; the secular thoughts of outward provisions must come in onely on the by; but howsoever they may not be intangled in worldly affaires, yet they ought in duty to cast so much eye upon these earthly things as may free them from neglect; It is to *Timothy* that *S. Paul* writes, that if any man provide not for his own, and especially for those of his own house, he hath denied the faith, and is worse then an Infidell. *1 Tim. 5. 8.*

4. Under the law the tenth part was precisely allotted by the owner of all things, for the maintenance of the sacred Tribe; And if the wise and Holy God had not found that a meet proportion for those that served at his Altar; he had either pitched upon some other, or left it arbitrary: yea

even before the law, *Gen. 14. 20. Abraham* (and in his loynes *Levi* himself) paid tithes to *Melchisedec* (*Heb. 7. 4.*) the priest of the most high God; and whether it were by his example, or by some naturall instinct, we finde the very heathen nations, after some great victory atchieved, were wont to devote still the tithe of their spoiles to their Deities: so *Camillus*, when he had after a long siege taken the rich City *Veios*, (a place of such importance, that upon the taking of it, he wished some great crosse might befall *Rome* for the tempering of so high a felicity) he presently offereth the tithe to his * Gods: yea it was their custome who were most devout, to consecrate the tithe of all their increase to those Gods they were most addicted unto; in so much as the Romans noted it in their *Lu-*

* *Ope. deo deatlw, &c. Clem. Al. Stro. 1.*

cullus, that he therefore grew up to so vast an estate, because he still devoted the tithe of his fruits to *Hercules*: And **Pliny* tells us that when they gathered their Frankincense, none of it might be uttered till the Priest had the tithe of it set forth for him.

5. There can be no good reason given, why we may not observe the very same rate of proportion in laying out the maintenance of the ministry under the Gospell; and if these rules and examples be not binding, (since Religion consisteth not now in numbers at all) yet there is no cause why Christian Kingdomes, or Commonwealths may not settle their choice upon the same number, and quantity with both Jewes, and Gentiles.

6. The nationall lawes of this Kingdome have set out the same pro-

* *Plin. l. 12. Bongus de num. Myster. num. 10.*

Kingdome have ſet out the ſame proportion of Tenthes for this purpoſe ; If therefore there were no other obligation from the law of God or of the Church, nor any precedents from the practiſe of the reſt of the world, yet in obedience to our municipall lawes, we are bound to lay forth the tenth part of our increaſe to the maintenance of Gods ſervice ; and that tenth is as truly due to the miniſter, as the nine parts to the owner.

7. Since the tenth part is in the intention of the law both civill and eccleſiaſtical, dedicated to the ſervice of God ; and in the meer intution thereof, is allotted to Gods miniſters, there can be no reaſon why it can be claimed, or warrantably received by Lay perſons, for their proper uſe and behoof ; ſo as this practiſe of Impropriation, which was firſt ſet on foot by unjuſt and ſacrilegious Bulls from *Rome*, is juſtly offensive both to God, and

and good men; as mis-deriving the well-meant devotions of charitable, and pious soules into a wrong channell. Nothing is more plaine then that Tithes were given to the Church; and in it, to God: how therefore that which is bequeathed to God may be alienated to secular hands, let the possessors look.

8. Let men be tied to make good the Apostles charge (since the legall rate displeases) and it shall well satisfie those that wait upon Gods services under the Gospel; The charge of the Apostle of the Gentiles, is: *Let him that is taught in the word communicate to him that teacheth, in all good things, Gal. 6. 6.* whereto he addes, *ver. 7 He not deceived, God is not mocked:* The charge is serious, and binding: and the required communication is universall; and that with a grave Item of Gods strict observation of performance: we may
not

not thinke to put it off, with *Ambroses* mis-pointed reading, of referring the *all goods things* to the teaching (a conceit sensibly weak, and mis-constructive :) nothing is more evident then that it hath relation to the communicating; wherein (for ought I see) God intends a larger bounty to the Evangelicall ministry then to the legall; where all is to be communicated, what is excepted? All, not exclusive of the owner; but imparted by the owner; Let this be really done, there will be no reason to stand upon the Tenth.

9. But that this may be accordingly done, there is no law that requires a meere arbitrarinesse in the communicators: the duty of the teacher is punctually set downe, and so well knowne that the meanest of the people can check him with his neglect: and why should we thinke the reciprocal duty of the hearer fit to be left loose, and voluntary: yet such

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an apprehension hath taken up the hearts of too many Christians as if the contributions to their ministers were a matter of meere Almes; which as they need not to give, so they are apt, upon easie displeasures; to upbraid: But these men must be put in minde of the just word of our Saviour; *The labourer is worthy of his wages*: The ministry signifies a service; a publique service at Gods altar; whereto the wages is no lesse due, then the meat is to the mouth of him that payes it; No man may more freely speake of tithes then my selfe, who receive none, nor ever shall doe: Know then ye proud ignorants, that call your Ministers your Almesmen, and your selves their Benefactors, that the same right you have to the whole they have to a part: God and the same Lawes that have scuffed you in your estates, have allotted them their due shares in them; which

which without wrong ye cannot detract: It is not your charity but your justice which they presse for their owne: Neither thinke to check them with the scornfull title of your servants; servants they are indeed, to Gods Church, not to you: and if they doe stoope to particular services for the good of your soules, this is no more disparagement to them, then it is to the blessed Angels of God, to be ministring spirits, *Heb. 1. 14.* sent forth to minister for them who shall be heires of salvation.

Shortly, it is the Apostles charge ratified in heaven, that they which labour in the word and doctrine should be remunerated with a double honour; that is not formall of words and complements, but reall of maintenance; which he laies weight upon his *Timothy* to enioyne, *1 Tim. 5. 17.*

And surely how necessary it is that we should be at some certainty

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in this case, and not left to the meere arbitrary will of the givers, it too well appeares in common experience; which tells us how ordinary it is, where ministers depend upon voluntary benevolences, if they doe but upon some just reproofe gall the conscience of a guilty hearer; or preach some truth which dis-relishes the palate of a prepossessed auditor, how he straight flies out; and not onely withholds his owne pay, but also withdrawes the contributions of others: so as the free-tongued teacher must either live by ayre, or be forced to change his pasture: It were easie to instance, but charity bids me forbear.

Hereupon it is, that these sportu-
lary preachers are faine to sooth up
their many maisters, and are so gag-
ged with the fear of a starving dis-
pleasure, that they dare not be free in
the reprehension of the daring sins of
their

their uncertaine benefactors; as being charmed to speake either *placientia* or nothing. And if there were no such danger in a faithfull and just freedome, yet how easie is it to apprehend, that if even when the lawes enforce men to pay their dues to their ministers, they yet continue so backward in their discharge of them: how much lesse hope can there be that being left to their free choice, they would prove either liberall or just in their voluntary contributions?

Howsoever therefore in that innocent infancy of the Church, wherein zealous Christians out of a liberall ingenuity were ready to lay downe all their substance at the Apostles feet, and in the primitive times immediately subsequent, the willing forwardnesse of devout people tooke away all need of raising set maintenances for Gods ministers; yet now, in these depraved and hard-hearted times

times of the Church, it is more then requisite, that fixed competencies of allowance should by good lawes be established upon them; which being done by way of Tithes in those countries wherein they obtaine, there is just cause of thankfulness to God for so meet a provision, none for a just oppugnation.

CASE VIII.

Whether it be lawfull for Christians where they find a country possessed by savage Pagans and Infidels, to drive out the native inhabitants; and to seize, and enjoy their lands upon any pretence; and upon what grounds it may be lawfull so to doe.

WHat unjust and cruell measure hath been heretofore offered by the Spaniard to miserable Indians, in this kind, I had rather you should

should receive from the relation of their own Bishop, *Bartolomæus Casca*, then from my Pen.

He can tell you a sad story of millions of those poor savages made away, to make roome for those their imperious successors; the discovery of whose unjust usurpation, procured but little thanks to their learned professors of *Complutum* and *Salamanca*: Your question relates to our owne case; since many thousands of our nation have transplanted themselves into those regions, which were prepossessed by barbarous owners: As for those countries which were not inhabited by any reasonable creatures, (as the *Bermudas*, or Summer-Islands; which were onely peopled with hogges, and deer, and such like brute cattle) there can be no reason why they should not fall to the first occupant; but where the land hath a known maister the case must vary:
For

For the decision whereof some grounds are fit to be laid.

No nation under heaven but hath some Religion or other, and worships a God such as it is, although a creature much inferiour in very nature to themselves; although the worst of creatures, evill spirits: and that religion wherein they were bred, (through an invincible ignorance of better) they esteeme good at least.

Dominion and propriety is not founded in Religion, but in a naturall, and civill right; It is true that the Saints have in Christ, the Lord of all things, a spirituall right in all creatures; *All things are yours,* (saith the Apostle) *and you are Christs,* and *Christ is Gods*: but the spirituall right gives a man no title at all to any naturall or civill possession here on earth; yea Christ himself, though both as God, and as Mediator, the whole world were his, yet he tells

Pilate

Pilate, My Kingdom is not of this world; neither did he (though the Lord Paramount of this whole earth) by vertue of that transcendent sovereignty put any man out of the possession of one foot of ground which fell to him, either by birth, or purchase: Neither doth the want of that spirituall interest bebarre any man from a rightfull claime and fruition of these earthly inheritances.

The barbarous people were Lords of their owne; and have their Sagamores; and orders, and formes of government under which they peaceably live without the intermedling with other nations.

Infidelity cannot forfeit their inheritance to others; no more then enmity professed by Jewes to Christian Religion, can escheat their goods to the Crownes under which they live; yea much lesse: for those Jewes, living amongst Christian people,

people, have, or might have had meanes sufficient to reclaime them from their stubborne unbeliefe, but these savages have never had the least overture of any saving helps towards their conversion: They therefore being as true owners of their native inheritances, as Christians are of theirs, they can no more be forced from their possessions by Christians, then Christians may be so forced by them: Certainly, in the same tearms wherein they stand to Christians, do also in their judgement, Christians stand to them; and if it would seeme hard to us, that an inundation of Pagans should (as heretofore it hath done) break in upon us, and drive us out of our native possessions, how could it seeme lesse unjust in us to them?

Their Idolatries, and sins against nature are haynous and abominable; and such as for which God of old
con-

condemned the seven nations to an utter extirpation ; But what commission have we for their punishment ? Could we show such a patent in this case as the Israelites had for their warres against *Amalek*, and those neighbouring heathens, all were sure : But you know who said, *What have I to doe to judge them that are without ?* 1 Cor. 5. 12. And if he may not be a Judge, who may be an executioner ?

Refusall of Christianity can be no sufficient ground of either invasion, or expulsion : sith violence is not the appointed way for plantation of the faith : which must be perswaded, and not compelled ; that sentence therefore of Pope * *Gregory* ; *Iustum*

* Greg. cap. Pervenerabilem: & cap. Si non. 23. q. 4. *Iustum sanctumque esse bellum quod infidelibus à Christianis inferatur, ut eis imperio subditis prædicari possit Christi Evangelium, ne si imperio subditi non sint, prædicationis & conversionis eorum qui crediderint impedimento esse possint.*

sanctumque

sanctumque esse bellum &c. (That it is a just and holy warre which is by Christians made against Infidels, that they being brought under subjection, the Gospell of Christ might be preached unto them; lest that if they should not be subjected, they might be an hindrance to preaching, and to the conversion of those that would beleeve;) is surely either not out of the chayre, or beside the cushion; and better beseems a successor of *Romulus*, then of *Peter*: I may not omit to acquaint you how hotly this maine question was disputed by Spanish and Italian Divines upon the very first entrance of this litigious usurpation: At which time Pope *Alexander 6.* (*Anno. 1493.*) gave his large Decretory Bull to *Ferdinand* King and *Isabella* Queen of *Castile* and *Aragon* for his expedition against the barbarous Indians of the then newly discovered world: *Genesius Sepulveda* a learned Spaniard

Spaniard writ then, in defence and encouragement of this holy invasion, a Dialogue, which he called *Democrates secundus*, which was published at *Rome*, by the procurement of *Antonius Augustinus*, Auditor of the Palace; which no sooner came abroad, then it was eagerly set upon, by the Divines both of *Italy* and *Spaine*; amongst these latter, the Doctors of *Salamanca*, adde the *Complutenses*; and above them *Antonius Ramirus* Bishop of *Segovia* fall foul upon that offensive discourse, which *Genesius* would faine have vindicated by an Apology, set forth to that purpose; but how insufficiently, it were easie to show, if it were as needfull: But to make the matter good, he thinkes to back himselfe by the authority of great, and famous persons, both Counsellors, and Doctors, by him cited; and above all by

by that loud Bull of * *Alexander* ; wherein yet for ought I see, the charge which is laid upon those Princes is onely to reduce the people living in those Islands and Countries to receive Christian Religion ; which we may well apprehend more likely to be done by other means then by the sword.

After much agitation it pleased the King of *Spaine*, to require the judgement of † *Franciscus à Viçtoria*, the famous Professor of Divinity at *Salamanca*, concerning this so weighty affaire ; which he hath published with such wisdom and moderation, as so great a businesse required ; stating the question aright on both sides ; both shewing the insufficiency of the received grounds of that Indian expedition, and directing to those

* Decret. & indultum Alex. 6. super expeditione, &c.
Populos in ejusmodi insulis & terris degentes ad Christianam religionem indulgere velit & debeat, &c.

† Franc. à Viçtoria Relect. de Indis.

just motives, and rules of proceedings herein, as might be, in such a case, justifiable: to which grave and solid discourse of his, you may, if you please, be referred for further satisfaction.

Onwards, I shall draw forth some few of such considerations from him as may serve for my present purpose.

First therefore it is lawfull for Christians to travell into any country under heaven; and as strangers to stay there, without any wrong done to the natives; A thing allowed by the law of nations derived from the law nature; By which law it is every where held an inhumane thing to offer ill measure to a stranger. It is the argument that righteous Lot used to the worst of Pagans, the Sodomites; *Onely unto these men doe nothing; for therefore are they come under the shadow of my raaf,* Gen. 19.8.

And

And if before the division of nations, the earth lay freely open to all passengers without scruple, to travell whither they pleased, surely, that partition was never intended to warrant a restraint : And if nature have made the Sea and all the In-lets of it common, it were very injurious to abridge any nation of the free use of so liberall an element.

Secondly, it is lawfull for us to use trafique with those Infidels, and to interchange commodities with them, and to abide upon their coasts for negotiation ; and to fish in their sea, and to take part of those profits which nature hath made common to all comers : And if those Pagans shall oppose us in so warrantable courses, it will be meet for us to tender them all faire satisfaction ; perswading them that we intend no harme or prejudice to them in their persons, or estate ; but much good to both ; labouring

to win them by all courteous demeanure; But if they shall fly out, notwithstanding all our kind indevours, into a violent opposition of us; setting upon us in a hostile manner, offering to cut our throats in so unjust a quarrell, it is lawfull for us to stand upon our defence, and to repell one force with another; and to use all convenient meanes for our security; and if we cannot otherwise be safe, to raise bulwarks or fortifications for our own indemnity; and if we finde our selves over-powred by implacable Savages, to call for the aid and assistance of our friends, and (if the enmity continue and proceed) of our Princes: since the just cause of warre is the propulsation of publique injuries; and such injury is as great, as barbarous.

But if not so much cruelty of disposition as feare and suspicion of a strange nation shal arme them against

us;

us; our care must be so to manage our own defence, as may be least offensive to them; and therefore we may not take this occasion of killing their persons, or sacking their townes, or depopulating their countries; for that in this case they are no other then innocent.

If after all gentle intreaties, courteous usages, and harmlesse selfe-defence, they shall persist in a malicious hostility, and can by no means be reclaimed from their impetuous onsets; there is now just cause not to deale with them as innocents, but as enemies: and therefore to proceed against them accordingly.

But an higher and more warrantable title, that we may have to deale with these barbarous Infidels, is, for the propagation of Christian Religion; and the promulgation of the Gospel of Jesus Christ amongst these miserable savages: For which we

have good ground from the charge of our Saviour: *Goe preach the Gospel to every creature; Mar. ult.* and he that was in bonds for the name of the Lord Jesus, tels us, *the word of God is not bound; 2 Tim. 2. 9.* not bound, either in fetters, or within limits: Oh that we could approve to God, and our consciences, that this is our maine motive and principall drift in our westerne plantations; but how little appearance there is of this holy care and indeavour, the plaine dealer upon knowledge hath sufficiently informed us; Although I now heare of one industrious spirit that hath both learned the language of our new-Islanders, and printed some part of the scripture in it; and trained up some of their children in the principles of Christianity: a service highly acceptable to God, and no lesse meritorious of men: The Gospel then may be, must be preached
to

to those heathens, (otherwise they shall perpetually remaine out of the estate of salvation)* and all possible meanes must be used for their conversion; But herein I must have leave to depart from *Victoria*, that he holds it lawfull if the savages doe not freely permit (but goe about to hinder) the preaching of the Gospell, to raise warre against them; as if he would have them cudgelled into Christianity: surely this is not the way: It is for Mahumetans to professe planting religion by the sword; it is not for Christians; It is a just cause therefore, that he puts in, that the slaughters hereupon raised may rather prove an hinderance to the conversion of the savages, as indeed it fell out; the poore Indians being by these bloody courses brought into such a detestation of their masters, the Castilians, that they profest they would not goe to heaven if any Spaniards were there.

The way then to plant the Gospell of Christ successfullly among those Barbarous soules, must be onely gentle, and plausible: first, by insinuating our selves into them by a discreet familiarity, and winning deportment, by an holy and inoffensive living with them; by working upon them with the notable examples of impartiall justice, strict piety, tender mercy, compassion, chastity, temperance and all other Christian vertues; and when they are thus won to a liking of our persons, and carriage, they will be then well capable of our holy counsels; Then will the Christian faith begin to relish with them; and they shall now grow ambitious of that happy condition, which they admire in us: Then shall they be glad to take us into their bosomes: and thinke themselves blessed in our society, and cohabitation: Loe this is the true way of Christian conquests, wherein

wherein I know not whether shall be the greater gainer, the victor, or the conquered; each of them shall blesse other, and both shall be blessed by the Almighty.

CASE IX.

Whether I need in case of some foule sin committed by me, to have recourse to Gods Minister for absolution; and what effect I may expect therefrom.

A Meane would doe well betwixt two extremes; the carelesse neglect of our spirituall fathers on the one side, and too confident reliance upon their power, on the other: some there are that doe so over-trust their leaders eyes, that they care not to see with their own; others dare so trust their own judgement, that they think they may sleight their spirituall

guides : there can be no safety for the soul, but in a mid-way betwixt both these.

At whose girdle the keyes of the kingdome of heaven doe hang, we thinke we should not need dispute, when we hear our Saviour so expressly deliver them to *Peter*, in the name of the rest of his fellowes ; and afterwards to all his Apostles, and their lawfull successors in the dispensation of the doctrine and discipline of his Church : In the dispensation of doctrine to all his faithfull Ministers under the Gospell ; In the dispensation of discipline to those that are entrusted with the manning of Church-government ; with these latter we meddle not ; neither need we, if we had occasion ; after the so learned and elaborate discourse of the power of the Keyes, set forth by judicious Doctor *Hammond* ; to which I suppose nothing can be added. The former

former is that which lies before us : Doubtlesse, every true minister of Christ, hath by vertue of his first and everlasting commission, two keyes delivered in his hand ; they key of knowledge, and the key of spirituall power : the one, whereby he is enabled to enter and search into , not only the revealed mysteries of salvation, but also, in some sort, into the heart of the penitent ; there discovering (upon an ingenuous revelation of the offender) both the nature, quality, and degree of the sinne ; and the truth, validity, and measure of his repentance : The other whereby he may in some sort either lock up the soul under sinne, or free it from sin : these keyes were never given him, but with an intention that he should make use of them upon just occasion. The use that he may and must make of them, is both generall, and speciall : Generall ; in publishing the
will

will and pleasure of God signified in his Word, concerning sinners; pronouncing forgivenesse of sinnes to the humble penitent, and denouncing judgement to the unbeleeving, and obdured sinner: In which regard, he is as the Herald of the Almighty, proclaiming war and just indignation to the obstinate; and tendring tearmes of pardon and peace to the relenting and contrite soul: or rather, as the Apostle stiles him, 2 *Cor.* 5. 20. Gods Ambassadour offering and suing for the reconciliation of men to God; and if that be refused, menacing just vengeance to sinners.

Speciall, in a particular application of this knowledge and power to the soul of that sinner which makes his addresse unto him: Wherein must be inquired both what necessity there is of this recourse, and what aide and comfort it may bring unto the soul.

Two cases there are wherein certainly there is a necessity of applying our selves to the judgement of our spirituall guides; The first is in our doubt of the nature and quality of the fact; whether it be a sinne, or no sinne; for both many sinnes are so guilded over with faire pretences and colourable circumstances, that they are not to be descryed but by judicious eyes; and some actions which are of themselves indifferent may by a scrupulous conscience be mistaken for hainous offences: whither should we goe in these doubts but to our Counsaile learned in the Lawes of God; of whom God himselfe hath said by his Prophet, *The Priests lips shou'd keep knowledge; and they should seek the law at his mouth; for he is the messenger of the Lord of Hosts, Mal. 2. 7.*

The second is in the irresoluble condition of our souls, after a known
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fin committed ; wherein the burdened conscience not being able to give ease unto it selfe seekes for aid to the sacred hand of Gods Penitentiary here on earth : and there may finde it ; This is that which *Elihu*, as upon experience, suggesteth unto *Job* ; on his dunghill : *Job* 33. 22. *The soul of the remorse'd draweth near to the grave ; and his life to the destroyers :* ver. 23. But if there be a messenger (of God) with him, an interpreter, one of a thousand, to shew unto man his uprightness, (and the soundnesse of his repentance) ver. 24. then is (God) gracious unto him, and saith, Deliver him from going down into the pit ; I have found a ransom, &c. ver. 26. He shall pray unto God ; and he will be favourable unto him ; and he shall see his face with joy. In case of some dangerous sicknesse of the body we trust not our own skill, nor some ignorant quack salvers, but seek to a learned
and

and experienced Physitian for the prescription of some sure remedies; whereas, if it be but for a sore finger, or a tooth-ach, we care onely to make use of our own receits: And so in civil quarrels; if it be only some sleight brabble, we thinke to compose it alone; but if it be some maine question importing our freehold, we are glad to waite on the staires of some judicious Lawyer, and to see him for advice: How much more is it thus in the perilous condition of our soules; which as it is a part farre more precious then its earthly Tabernacle, so the diseases whereto it is subject, are infinitely more dangerous, and deadly.

Is your heart therefore embroyled within you, with the guilt of some hainous sin? labour what you may to make your peace with heaven; humble your selfe unto the dust before the Majesty whom you have offended;

fended ; beat your guilty brest, water your cheeks with your teares ; and cry mightily to the father of mercies for a gracions remission ; but if after all these penitent indevours you finde your soule still unquiet, and not sufficiently apprehensive of a free and full forgivenesse, betake your selfe to Gods faithfull Agent for peace ; run to your ghostly Physitian, lay your bosome open before him ; flatter not your owne condition ; let neither feare nor shame stay his hand from probing and searching the wound to the bottome ; and that being done, make carefull use of such spirituall applications as shall be by him administred to you : This, this is the way to a perfect recovery, and fulnesse of comfort.

But you easily grant that there may be very wholsome use of the ghostly counsell of your Minister in the case of a troubled soule ; but you
doubt

doubt of the validity and power of his absolution : concerning which it was a just question of the Scribes in the Gospell; *Who can forgive sinnes but God onely?* Mar. 2. 6. Our Saviour therefore to prove that he had this power, argues it from his divine omnipotence; *He onely hath authority to forgive sinnes*, (ver. 7.) that can say to the decrepit paralytick; *Arise, take up thy bed and walke*; (ver. 9.) none but a God can by his command effect this; he is therefore the true God that may absolutely say, *Thy sinnes be forgiven thee*: (ver. 10.) Indeed, how can it be otherwise? Against God onely is our sin committed; against man onely in the relation that man hath to God; He onely can know the depth of the malignity of sin, who onely knowes the soule wherein it is forged; He onely who is Lord of the soule, the God of spirits, can punish the soule for sinning;

ning; He onely that is infinite can doome the ſinfull ſoule to infinite torments; He onely therefore it muſt be, that can releaſe the guilty ſoule from ſin, and puniſhment. If therefore man, or Angell ſhall challenge to himſelfe this absolute power to forgive ſinne let him be accuſed.

Yet withall it muſt be yeelded, that the bleſſed Son of God ſpake not thoſe words of his laſt commiſſion in vaine; *Whoſe ſoeuer ſinnes ye remit, they are remitted unto them, and whoſe ſoeuer ſinnes ye retaine, they are retained*; John 20.23. neither were they ſpoken to the then preſent Apoſtles onely, but in them to all their faithfull ſucceſſors to the end of the world.

It cannot therefore but be granted, that there is ſome kind of power left in the hand of Chriſts miniſters, both to remit and retaine ſinne: Neither is this power given onely to the Governours

vernours of the Church, in respect of the censures to be inflicted, or relaxed by them ; but to all Gods faithfull ministers, in relation to the sins of men : A power not soveraigne and absolute, but limitted and ministeri- all, for either quieting the conscience of the penitent, or further aggrava- ting the conscience of sin and terror of judgement to the obstinate and rebellious ; Neither is this onely by way of a bare verball declaration, (which might proceed from any o- ther lips) but in the way of an opera- tive and effectuell application, by vertue of that delegate, or commissi- onary authority, which is by Christ entrusted with them : For certainly, our Saviour meant in these words to conferre somewhat upon his Mini- sters, more then the rest of the world should be capable to receive, or per- forme, The absolution therefore of an authorized person must needs be
of

of greater force and efficacy, then of any private man, how learned or holly soever, since it is grounded upon the institution and commission of the Sonne of God, from which all power and vertue is derived to all his ordinances: and we may well say, that whatsoever is in this case, done by Gods minister (the Key not erring) is ratified in heaven: It cannot therefore but be a great comfort, and cordiall assurance to the penitent soule, to heare the messenger of God (after a carefull inquisition into his spiritual estate and true sight of his repentance) in the name of the Lord Jesus pronouncing to him the full remission of all his sinnes.

And if either the blessing, or curse of a father goe deeper with us, then of any other whosoever; although but proceeding from his own private affection without any warrant from above; how forcible shall we esteeme the

the (not so much apprecatory, as declaratory) benedictions, of our spirituall Fathers, sent to us, out of Heaven?

Although therefore you may perhaps, through Gods goodnesse, attaine to such a measure of knowledge and resolution, as to be able to give your selfe satisfaction concerning the state of your soul; yet it cannot be amisse, out of an abundant caution to take Gods minister along with you, and making him of your spirituall Counsaile, to unbosome your selfe to him freely, for his fatherly advice and concurrence: The neglect whereof, through a kinde of either strangenesse, or mis-conceit, is certainly not a little disadvantageous to the soules of many good Christians. The Romish Laity makes either Oracles, or Idols of their Ghostly Fathers; if we make Ciphers of ours, I know not whether we be more injurious

rions to them, or our ſelves. We goe not about to rack your conſciences to a forced, and exquisite confeſſion; under the pain of a no-remiſſion; but we perſwade you for your own good, to be more intimate with, and leſſe reſerved from, thoſe whom God hath ſet over you for your direction, comfort, ſalvation.

CASE X.

Whether it be lawfull for a man that is not a profeſſed Divine, that is, (as we for diſtinction are wont to call him) for a laick perſon, to take upon him to interpret the Scripture.

MAny diſtinct conſiderations had need to make way to the answer.

First, it is one thing for a man to interpret Scripture, another thing to take upon him the function of preaching

ing the Gospell, which was perhaps in your intention; this is farre more large then the other; every man that preacheth, interpreteth the Scripture; but every one that interprets Scripture, doth not preach: To interpret Scripture is onely to give the sense of a Text; but to preach is to divide the Word aright; to apply it to the conscience of the hearer; and in an authoritative way to reprove sinne, and denounce judgment against sinners; to lay forth the sweet promises of the Gospell to the faithfull and penitent; for the performing whereof there must be a commission to Gods minister from him that sends him; upon which the Apostle hath pronounced a (*Tis inar@*) *Who is sufficient for these things?*

Secondly, it must be considered in what nature, and within what compass the interpretation is; for doubtlesse the just degrees of callings must be

be herein duely observed; whether in a publique way, as Pastors of congregations; or in a private way, as masters of families; whether in the schooles, in a meere Grammaticall way; or in the Church, in a predatory.

Thirdly, it must be considered, as what the calling, so what the gifts are of the interpreter: for surely, meere interpretation doth not depend upon the profession, but upon the faculty of the undertaker; whether he be learned, or ignorant; whether skilfull in languages and arts (which certainly must be required in whosoever would put forth his hand to so holy and great a worke) or whether inexpert in both: where these gifts of interpretation, and eminent endowments of learning are found, there can be no reason of restraining them from an exercise so beneficially edificatory to the Church of God: without

without which the truth of Christian religion had wanted much both of her vigour, and lustre in all generations. How famously is it known that *Origen* before his entring into holy Orders, even at eighteenth yeares of his age entred into that great worke of his Catechisings: *Act. 18. 24, 25.* *Apollos* the Alexandrian was an eloquent man, and mighty in scriptures, and taught diligently the things of the Lord; yet knew nothing but the Baptisme of *John*: till *Aquila* and *Priscilla* took him to task, and more perfectly expounded to him the way of God; and what happy use it pleased God to make of laick hands, for both the defence and propogation of the Gospel, we need no other witness then *S. Jerome*; who hath memoriz'd amongst the primitive Christians, *Aristides*, *Agrippa*, *Hegeippus*, *Jushin*, *Musanius*, *Modestinus*, both the *Apollonii*, *Heraclius*, *Maximus*, and

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many

many others, whom God raised up amongst the learned laity of those times, to Apologize for Christianity; And in the last foregoing age, how scarce removed out of our sight, are *Laurentius Valla*, both the Earles of *Mirandula*, *Capnio*, *Fagius*, *Erasmus*, *Faber*, and the rest of those famous way-makers to the succeeding restitution of the evangelicall truth; And what a treasure in this kind had the Church of God lost, if it should have missed the learned annotations upon the scripture, derived to us from the hands of *Mercerus*, *Joseph Scaliger*, *Drusius*, both *Casaubons*, *Tilenus*, *Grotius*, *Heinsius*, *Selden*, and such other expert Philologists, never initiated into sacred Orders?

Fourthly, due and serious consideration must be had of the interpretation it selfe; that it be genuine, and orthodox: for there can be nothing in the world more dangerous then to mis-

mis-construe God speaking to us in his Word; and to affixe upon his Divine Oracles a sense of our owne, quite dissonant from the intention of that spirit of Truth: care therefore must be taken that the interpretation given be every way conforme to the Analogy of faith, and fully accordant to other Scripture; the neglect whereof, through either ignorance or mesprision hath bred many foul and perilous Solocismes in Divinity; To give you a taste of too full a dish: In the 18. of *Ecclesiasticus**, where the Vulgar reads, *He that lives for ever created all things at once*: some, and those no mean ones, of the Ancient, followed also by latter interpreters, have been misled into an ungrounded conceit of an instantany and entire creation of the world, and all the parts thereof, in the first moment of time; whereas the Scripture hath

* *Eccles. 18. 1. εν τω αρα τοις αιωνις.*

exprefly and punctually fet down the feverall fix dayes, wherein each part of it was diftinctly formed: which thofe mifconftituters are fain to underftand of the diftinct notifications given to the Angels concerning this almighty work: and what curious fubtilties have been hereupon raifed by our fchool Divines *, is more fit to be paff over with an unpleafing fmile, then to be ferioufly recounted, whereas the intention of the place, is onely to fignifie that God made all things in the univerfall world that have any being; intimating not the time of creation, but (as our f Version hath it) the Generality of things created.

What advantage the blafphemous Arians have formerly taken from the mif-interpretation of *Proverbs* 8. 22. where Wifdome is brought in

* *κοινα. communiter. Montan.*

† *Επιτηδεύων. in forma.*

(by the mistaking of some ancients) to say, **The Lord created me (in stead of possessed me) in the beginning of his way, before his workes of old,* is more worthy of indignation, then any further prosecution. But most pregnant and notable is the grosse mistake of a late famous school-man, *Franciscus d'Arriba*, Confessor to the late Queen Mother of France, who to maintaine that new way of reconciling that scholasticall difference among the Roman doctors, concerning the effectual aide of Divine Grace, depending or not depending upon free will, (about which he had sixty dayes disputation with Cardinall *Arsely* and Cardinall *Bellarmino*; shewing how it might well be maintained without the devises of phisicall predeterminations, or that *scientia media* of our late Jesuites) relies chiefly for his opinion upon that Text of † *Esay 45. 11.*

* Prov. 8. 22. 111p. † Vulg. Trā. Esa. 45. 11.

Hac dicit Dominus ſanctus Iſraelis qui fecit ventura, Thus ſaith the Lord the holy one of Iſrael who hath made things to come: following a miſ-edition of the Vulgar which perverts the ſenſe, by making a wrong ſtop in the ſentence, whereas their owne *Montanus*, and any other that hath but ſeen the Hebrew Text, would read it; *Hac dicit Dominus ſanctus Iſraelis qui fecit eum; Ventura interrogate me: Thus ſaith the Lord the holy one of Iſrael; and his maker: Ask me of things to come concerning my ſonnes, &c.* referring the *ventura*, (things to come) to the following interrogate. So *Pez*, the late extravagant Doctor of Spaine, in the maintenance of his novel opinions againſt Fathers and Councils, preſſed againſt him, ſtands upon his defence, out of the Synod of *Conſtantinople*, *Act. 5.* groundred upon the * words of

* *Eccles. 25. 9.* Blessed is he that preaches a word unheard of.

mis-called, *Solomon*; *Beatus qui praedicat verbum inauditum*; corrupting both the Text and the Councell; whereas it should be read, *verbum inauditum obediens*: and the Councell hath it aright, (εις ἀκοῆς ὑπακούοντες :) as ours turnes it likewise, *well is he that speaketh in the eares of them that will hear*: It were easie to fill a just volume with instances of this kind.

To this purpose it will be requisite to make use of all those helps that may enable an interpreter to understand the Scriptures; whether those that are internall in it selfe; or externall from other supplies: of the former kind are a diligent sifting of the context and inference; and a carefull comparing and conferring of one Scripture with another; for all truths agree with themselves; and this Word of God is the Sun that gives us light to see it selfe Externall; where it will

be needfull to call both for the aid of arts and tongues; and for the testimonies and judgements of reverend antiquity, and the not-to-be-neglected authority of moderne Doctors; and thirdly, a due regard of those golden rules of Interpreting; which are recommended to posterity by the learned pennees of *Clemens of Alexandria, Hierome, Augustine, Gerson, Hyperius, Illyricus, Facobus Matthias*, and others; which, as meet for a volume apart, may not expect to find a roome in so concise a Treatise.

The want and neglect of all which requisites what strange work it must needs make with the simple and unlettered, we may well conceive, when great Clerkes have hertupon bewrayed so foul and palpable miscarriage.

Albinus, the learned master of *Charles the great*, writing upon *John*, finding it said of *Judas* that having

received the Sop, he went immediately out; * *Et erat nox*; and it was night; puts both together as spoken of *Judas*; He (saith he) was the night that went out; as Christ is the day that gives knowledge to his disciples that were day too; so *Judas* the night gives knowledge to the Jewes that were night, of a traitorous wickednesse, &c.

What worke † *Bernard*, (who shewed in this, that he saw not all things) makes of the *Demonium meridianum*, the noone-day-Devill, in one of his Sermons, is evident to be seene; yet had he beene as well seene in language as he was fervent in his devotion; he had spared that discourse as raised from a meer ungrounded interpretation; there being no Devill in the text; but a phantasme of his deluded imagination: And if I should set forth the descants that our Postillars

* *Erat autem ipse nox*. † *Phil. 21. 6. Bern. Ser. 33.*

run upon the names of *Jobs* three daughters, I should seeme to you as apt to sport in so serious a subject; and if I could thinke it worth the labour of gathering up the wild senses, far-fetcht Allegories, absurd inferences, that ignorant Friers have fastned upon scripture, it is not a small skin that would containe that Tome.

Surely that man, whosoever he be, that would be hoisting saile in these deeps of scripture, had need to be well ballast, and well tackled, and skilfull in the Compasse, else he will have much adoe to escape a wrack: He that will walk in pathes of danger had need to have his eyes about him; an hoodwinkt man may easily be carried against a post: and he that hath not light enough to see his owne way, had need to take heed whom he trusts: He that would blind-fold follow these very interpretations which the Church of *Rome* hath com-
mended



mended for authentically, would run into foule and dangerous absurdities: let me single out some few confessed by their owne *Estius*, and *Lucas Brungenfis*; such as are plainly contradictions to Scripture, and doe, as it were, give the lye to Gods spirit. Such is that 2 Sam. 8. 18. *Filii autem David sacerdotes erant*; *The sonnes of David were Priests*: whereas every child knowes that the Scripture frequently tells us none could be priests but of *Aarons* order and tribe; out of *Levies* loines; and that *David* was of the house of *Judah*: the *Septuagint* rightly turnes it *αρχαι* *. Againe who that shall finde it in the Vulgar interpretation: *David desperabat &c.* *David despaired* that he could escape from the face of *Saul*: would not inferre that he utterly distrusted Gods

* The word in the originall is כהנים which every man knowes to be used ordinarily to signifie either *Principes*, or *Sacerdotes*, as Exod. 2. 16.

assurance by the prophet of his future Kingdome; whereas the originall is by *Estius* his owne confession, *Festiuabat*, as we also turne it, *David made hast to get away &c.* 1 Sam. 23. 26. He that should finde it reported of one of the sonnes of *Er*, *Qui stare fecit solem*, (he that made the sun to stand still) would justly wonder what kinde of man this was, that had been so long obliuied from the world, and yet should have done so strange a miracle as never was done but by *Joshua*; (1 Chron. 4. 22.) whereas he that lookes into the text, shall finde no mention at all of the Sunne; but onely of the meere proper name of *Fachin* the sonne of *Er*.

He that shall read in *Job*, where God speakes of the *Leuiathan*; *Cum sublatu fuerit* (i. *Leuiathan*) *timebunt Angeli et territi purgabuntur*; when he raiseth up himselfe the Angels shall feare, and being terrified shall be purged;

purged; Job 41. 25. would sure
thinke this Whale were the Devill,
(as some ancients have mistaken him)
and may well wonder how the good
Angels (being celestiall spirits) could
be capable of feare; or how the evill
Angels could be capable of purging:
when the text hath no menrion, nor
thought of * Angels; but onely sig-
nifying the strength and terriblenesse
of the Whale expresse it in these
words; *When he raiseth up himselfe
the mighty are afraid; by reason of
breakings they purifie themselves. So-
lomon* was faulty enough in his Idola-
try, but he that shall read 1 Kings
11. 5. (in the Vulgar interpretation)
that he went after *Chemosh* the God
of the *Moabites*, shall adde one Idol
more to him then we finde him guilt-
ty of. *Solomon* was in his holy and

* Where doubtlesse  was mistaken for
 which title is sometimes given to the
Angels. 1 King. 22. 19.

regular

regular times, *1 King. 4. 32.* full of heavenly meditations, and divine ditties: but he that ſhould follow the Vulgar interpretation, would faſten upon him almoſt * four thouſand more then ever he owned.

After that *Merab Sauls* eldeſt daughter was given away to *Adriel* the *Meholathite*, *1 Sam. 18. 20.* contrary to engagement, he that will follow the Vulgar, muſt ſay that *David* ſtraight fell in love with *Michal*, the other ſiſter; whereas the text tells us that *Michal* fell in love with him.

He that ſhould finde in the Vulgar conſtruction, that *Saul* ſung all the day naked before *Samuel* in *Naioth*, would think his new prophesying had put him into a merry vein, *1 Sam. 19. 24.* whereas the text onely tells us that he fell downe ſtripped of his wonted clothes.

* *Quingue milia*, for *mille & quingue*, five thouſand, for a thouſand and five. † *Cecinit* for *Cecidit*.

in ſuper

He

He that should find in the Vulgar, *Psal. 71. 5. David reporting of himself* [*Non novi literaturam*] *I know no learning*, would wonder at the Prophets disparagement of his skill, who had elsewhere professed himself wiser then his teachers; whereas all that he sayes, is, * that the mercies and blessings of God upon him have been so many, that he knows not the numbers thereof.

He that should find the seven Angels in the Revelation *Vestitos lapide; clothed with stone* †, *Rev. 15. 6.* would sure think them buried; whereas the Text is, *clothed in pure white linnen.*

And what doe you imagine would a plaine reader think of that charge of the wise man; *Noli velle mentiri omne mendacium; Be not willing to lie all manner of lies, Eccles. 7.* would he

* The word is עֲפָרַת *numeros.* † *Rev. 15. 6.* λατὼν ἑαυτοὺς χιτῶνα. *Said: ἐν δὲ δοκίμῳ αἰῶνι. Rev. 15. 6.*

not

not straight say: Some belike I am allowed to lye: whereas the words are peremptory even in *Astius* his reading, according to ours; *We not to make any manner of lies.*

Yea that very correction of the Vulgar interpretation which *Brugensis* allowes and magnifies, 1 Cor. 15. 51. with what safety can it passe the judicious; whiles he reads; *Omnes quidem resurgemus, sed non omnes immutabimur; We shall all rise again, but we shall not all be changed.* For how can those rise again, that never died: how are those capable of a resurrection, which are onely changed: Whereas the just sense runnes according to our * Version, *We shall not all sleep, but we shall all be changed.* For those that are found alive at our Saviours second coming shall not sleep in death; yet both they and the formerly dead must undergo a change.

* *pro omni*

I could utterly weary you with instances ; How must he that reades the Apoeryphall *Ecclesiasticus*, needs say that this man (how obscure foever in his authority) saw more and clearer then all the acknowledged Prophets of the Old Testament ; for he hath foretold us expressly the very name of our Lord Jesus which none of them ever before hand published : For he (*Eccles. 43. 23.*) speaking of the deep sea, is read in the Vulgar to say, *Plantavit illum Dominus Jesus :* The Lord Jesus planted it : I shame to think what sport a Jew will make of such a grosse mistaking ; wherewith *Jesus* is mis-read, for *mons* : Islands : so as the right sence is onely this ; God by his counsell appeareth the deep, and planteth Islands therein ; But I forbear, onely if you have too much leasure, you may be pleased to cast your eye upon the Margine.

In

Neh. 6. 2. *Percutiamus ſædus in vitulis, in campo uno :* for, *In viculis, in campo, Ono.* *Anni noſtri ſicut aranea meditabuntur,* Pſal. 99. 9. for, as a tale that is told : *Concupiſcentia ſpadonis devirginabit juvenulam,* Eccluſ. 20. 4. *Super* for *ſubter.* Gen. 35. 8. *Vulnera* for *ulcera,* Exod. 9. 9. *Diſtinctum* for *Bis tinctum,* Exod. 49. 28. *Sanctuarii* for *Sancto atrii,* Levit. 6. 16. *Tonſis* for *Tuſis,* Levit. 22. 24. *Neque* for *atque,* Levit. 25. 11. *Solis,* for *ſaliſ,* Deut. 29. 23. *Non fueris,* for *fueris.* Joſh. 2. 18. *Occidentalem,* for *Orientalem,* Joſ. 12. 3. *Hamata* for *Squamata,* 1 Sam. 17. 5. *Vagi habitabunt* for *pagi habitabuntur,* 1 Sam. 27. 8. *Judam* for *Ludam* 2 Sam. 6. 20. *Tumulum* for *tumultum,* 2 Sam. 18. 29. *Lapides ſeculi,* for *Sacculi,* Prov. 16. 12. *Ad alia* for *ad alta,* Prov. 26. 2. *Sponſa* for *Specioſa,* Cant. 2. 13. *Adultera* for *adultæ,* Eccluſ. 42. 9. *Inſidelem* for *fidelem,* Eſa. 17. 10. *Imitantes* for *irritantes :* *Terra* for *ter,* Eccluſ. 48. 2, 3. *Obſurdum* for *obſordum,* Eſa. 33. 19. *Imprudentem* for *impudentem,* Eſa. 33. 19. *Fauis ſicariis* for *ſatus ſicariis.* Eſa. 50. 39. *Vinctas* for *tinctas.* Ezech. 23. 13. *Ejicias,* for *mitas.* Mat. 9. 38. *Angelus* for *Angulus.* Zach. 10. 4. *Servivit* for *ſervavit,* Oſe. 12. 12. *Confessus,* for *confuſus,* Mar. 8. 38. *Sexta* for *tertia,* Mar. 15. 25. *Myielem* for *Meliſa,* Acts 28. 1. *Compellebuntur,* for *Compelebantur.* Luk. 8. 23. *Placuerunt* for *Latuerunt.* Heb. 13. 2. *Adduxiſtis* for *addixiſtis.* Jac. 5. 6. *In carne* for *in carcere,* 1 Pet. 3. 19. *Appropinquabit* for *appropinquavit,* 1 Pet. 4. 7. *Tubarum* for *horbarum,* Rev. 19. 2. *De igne Chaldaeorum* for *de Ur Chaldaeorum,* Nehem. 9. 7.

In theſe and many more (for I meant to give you but an aſſay) the mistakes

mistakes are important, and such as make no small change in the Text; which I have therefore produced that I might let you see how easie it is for a man that takes all things upon trust to be abused by his credulity; and how unsafe it is much more for an unexpert and injudicious person to meddle with the holy Oracles of the Almighty.

The conclusion then must be, that however it may be lawfull for the eminently learned, either in schooles or families, (according as their calling may warrant them) to interpret even difficult Scriptures, and to untie the knots of a Text; yet since not many are thus qualified, and those that are so qualified, if they neglect to follow the prescribed rules, may easily miscarry, to the great perill both of their owne souls, and others; I should therefore advise that this may be the act of but some few
choice

choice persons, and of them, with all possible caution: and that ordinary Christians, if they have a desire, (besides all fundamentall truths (which are laid down openly and clearly in the sacred Word of God) to inform themselves in those darker verities, which lie hidden in more obscure Scriptures) to have recourse to their learned and faithfull Pastors; and rather to rest in that light which they shall receive from their well-digested instructions, than to rely upon their own (perhaps confident, but much weaker) judgement.

RESO-



RESOLUTIONS.

The fourth Decade.

Cases Matrimoniall.

CASE I.

Whether the marriage of a Sonne or Daughter without or against the Parents consent may be accounted lawfull.



Matrimony, though not a Sacrament, yet a sacred institution of God for the comfort and propagation of mankind, is so fruitfull of questions as that *Sanchez* the Scholastic hath stuffed it with many. *Sanchez* Boet. *Jes. Theol. De Matrimonio.*

and in the^m law civil there is the like permission, although under certaine conditions; and particularly in an utter exigency, *Vitius causa*; To the latter whereof, some † Expositors hold so strictly, as that they will not admit this to be done for the redemption of the parent from death, or perpetuall bondage; but onely to preserve him from affamishing: wherein certainly they are over-strait faced, and too much wedded to syllables; it being questionlesse the intention of the law to comprehend all equally-pressing necessities; to which they adde that this must be onely in the fathers power, and that to a child not emancipated, and left to his owne disposing: It is not in any way to dispute the case with them, take it at the easiest, it sufficiently shewes the great power that Nature it self yelds

h. E. 1. l. De P^uris in q^uib^us. † Covarruv^{us} 3. var. c. 14. ex Accursio & aliis. 4. l. 1. d. e. 3. d. 1. q. 1. 2. 2.

to the parent over the child; By how much stronger then the parents interest is in the child, so much more wrongfull it must needs be in the child to neglect his parents in finally bestowing himselfe; And if we look into the positive law of † God, we shall find the child so wholly left to the parents will and disposition, as that he may, at his pleasure, dispense with, or frustrate the vow of his childe made to God himselfe.

Neither doe the * Roman doctors generally hold otherwise this day in case of an under-age; and some of them extend this power yet further; yet not without a distinction: holding, that after the age of puberty, those vows onely are in the mercy of the father, which may be prejudiciall to the government of the family, and paternall power, which is sufficient for my purpose in the question in hand.

† Num. 30. 3, 4, 5, 6. * Less. de Jure l. 2. c. 40. dub. 24.

And although those Casuists doe sufficiently dote upon their * Mon-
kery, and the vowes thereunto apper-
taining; yet they ascribe so much to
the bond of filiall duty, as that they
teach, That a sonne which (his pa-
rents being in extreme need, and
wanting his help) enters into a religi-
ous order; or comes not out of it
(though professed) when he might
be likely by his coming forth to be
aidfull to his said parents, is guilty
of a sin against the fifth Command-
ment: so as even with them, the re-
spect to a parent ought to over-weigh
a vow of religion; although consum-
mate by a solemne profession.

But, that you may not object to
me the age of the law as therefore
abrogated because Mosaicall; heare
what the chosen vessell saies under
the new law of the Gospell,

* Navar. enchir. 4. præc. 14. n. 14. *Filius qui pa-
rentibus in extrema necessitate constitutus est*

If any man thinketh that he behaveth himselfe uncomely towards his virgin if she passe the floure of her age, and need so require, let him doe what he will; he sinneeth not; let her marry: (1 Cor. 7. 36.) Nevertheless he that standeth stedfast in his heart, having no necessity; but hath power over his owne will, and hath so decreed in his heart that he will keep his virgin, doth well &c. (ver. 37.) Loc, the Apostle supposeth it in the parents power either to keep his daughter a virgin, or to dispose of her in marriage: she is not her owne, either to hold, or give; but must be altogether ordered by the superiour will of a parent: Nor, that any force is allowed either way, to be used towards the daughter; whether to continue her in a constrained virginity, or to cast her against her minde upon a disaffected match; No, that God who disposeth all things sweetly, would have us

doe so too; he allowes parents to be rulers of their children, but not tyrannes: what they doe therefore in this kinde, must be more by counsaile, then command: and with more sway of love, then authority: thus, consulting wisely with the state of times, and the childs disposition, and abilities of containing, must the parent either keep his virgin, or labour for the provision of a meet consortship: Thus did the two great Patriarchs of Gods ancient Church, *Abraham* and *Isaac*, provide fit matches for their holy seed; whiles the unholy provided unfit matches for themselves: Thus did their godly issue in all generations take their parents along with them in the choice of meet yoke follows, whiles the godless, whether out of impetuous lust, or stubborn disobedience, affect with *Eſau*, *Gen. 28. 6, 7, 8.* to be their own purveyours, to the great regret, and heart-

heart-breaking of their parents.
Lastly, the latitude that *S. Paul* gives of the liberty of marriage to all Christians is, *Tantum in Domino*; *only in the Lord*; *1 Cor. 7. 39.* Now how can that marriage be in the Lord, which is against him? and how can that be other then against the Lord, which is against the Lords commandment? And what commandment can be more expresse then, *Honor thy father and thy mother, Gal. 6. 1.* And, *Children obey your parents?* *ver. 2.* And what can be more contrary to the honour and obedience due to Parents, then to neglect them in the maine businesse that concernes our lives? And what businesse can concerne our life so much, as the choice of a meet partner, with whom we may comfortably wear out all the dayes of our pilgrimage on earth?

Doubtlesse then, we may in a generality

nerality ſafely conclude, that it is altogether unlawfull for a child to ſlight his Parents conſent in the choice of his marriage; There may be ſome particular caſes incident, wherein perhaps this may without ſinne or blame be forborne; as when the child either by generall permiſſion, or former elocation ſhall be out of the Parents diſpoſing, or where the parent is defective in his intellectualls, or where the child lives *in remotis*, out of the compaſſe of intelligence; or where the Parent being averſe from the true Religion denies his conſent to match with any but thoſe of his own ſtrain; or ſhall upon other by-occasions wilfully ſtand upon ſo unreaſonable termes, that neither friends nor authority can overrule him; But where theſe or the like preponderating exceptions do not intervene, the child cannot without ſin balk the Parents conſent to his choice in marriage. But

But though such marriages without, or against consent, be not lawfully made; yet being once made, they are valid. * The civill law, out of the grounds of policy, goes herein too farre, which sentenceth those marriages void, which are made without the consent of Parents, or Guardians; but as Matrimony hath something in it of Nature, something of Civility, something of Divinity, as instituted by God, and by him to be regulated; so sure this last interest ought to over-sway the other two; The marriage therefore thus made, being though faulty yet true, is doubtlesse after consummation indissoluble. The parties repentance, and the parents sorrow may have leasure to afflict them, no power to relieve them.

* *Matrimonia esse irrita, &c.* Instat. de nuptiis et, ff. de jure nuptiarum. Ita & Evarist. in constit. edita. Anno C. 100.

CASE II.

Whether Marriage lawfully made may admit of any cause of divorce, save onely for the violation of the marriage bed by fornication or adultery.

Our Saviour hath so punctually decided the case in his Divine Sermon upon the mount, that I cannot but wonder at the boldnesse of any man, who calls himself a Christian, that dares raise a question after so clear and full a determination from the mouth of Truth it self.

Whosoever, (saith he) shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whosoever shall marry her that is divorced, committeth adultery, Mat. 5. 32. Yet I finde this so evident an assertion checked by two sorts of adversaries; The one, certain wild Novellists,

vellists, who admit of very sleight causes of separation; the other, Romish Doctors, who plead for some other main and important additions to this liberty of divorce.

I have heard too much of, and once saw, a licentious Pamphlet thrown abroad in these lawlesse times, in the defence, and encouragement of Divorces (not to be sued out, that solemnity needed not, but) to be arbitrarily given by the disliking husband, to his displeasing, and unquiet wife; upon this ground principally, that Marriage was instituted for the help and comfort of man; where therefore the match proves such, as that the wife doth but pull down a side, and by her innate peevishnesse, and either sullen, or pettish and forward disposition brings rather discomfort to her husband, the end of Marriage being hereby frustrate, why should it not, saith he, be in the Hus-

bands power (after some unprevailing meanes of reclamation attempted) to procure his own peace, by casting off this clogge, and to provide for his own peace and contentment in a firmer Match :

Woe is me : To what a passe is the world come that a Christian pretending to Reformation, should dare to tender so loose a project to the publique ? I must seriously professe when I first did cast my eye upon the front of the book, I supposed some great wit meant to try his skill in the maintenance of this so wild, and improbable a paradox ; but ere I could have run over some of those too wel-penned pages, I found the Author was in earnest, and meant seriously to contribute this peece of good counsaile in way of Reformation to the wise and seasonable care of superiours : I cannot but blush for our age, wherein so bold a motion hath been, amongst

mongst others, addmitted to the light : what will all the Christian Churches through the world, to whose notice those lines shall come, think of our wofull degeneration in these deplored times, that so uncouth a designe should be set on foot amongst us ?

Or how can they construe it other, then a direct contradiction to our Saviours sentence, in maintaining that practise, which he expresly professeth to oppose ? for, what was the Jewish guise here checked by our Saviour, but a voluntary repudiation of a lawfull wife upon the termes of dislike, other then fornication ? Their mis-interpretation of the Law alluded unto, argues no lesse ; The law alluded unto is, that of *Deuteronomy* ; where God sayes, *When a man hath taken a wife, and hath been her husband, and it shall be, that she finde not grace in his eyes, because he hath found*

found in * her matter of nakednesse, he shall write her a bill of divorcement, and send her away, Deut. 24. 1. whereupon he infers with an, *Ego dico*, I say unto you, *Whosoever shall put away his wife saving for fornication, causeth her to commit adultery*: the matter of nakednesse therefore, for which the Jewes were then wont to divorce their wives, (and offended in so divorcing them) was any other displeasing quality, besides the breach of wedlock through bodily uncleanness; for which onely had they dismissed their wives, our Saviour had neither faulted their Gloss, nor their Practise; so as herein Christ the giver of the Law, decides one of those great controversies, which were agitated between the emulous schooles of *Sammai*, and *Hillel*: determining on *Sammai's* side, that for no other nakednesse but that of adultery it was

עדות זכר

law

lawfull to divorce a wife: and flatly condemning by the like answer that [*πᾶσαν αἰτίαν*] (*Mat. 19. 3.*) every cause of repudiation then ordinarily received; as it was by the Pharisee purposely propounded unto him.

Answerable whereunto is that of the Prophet *Malachi*, who (in our just reading) hath so fully decided the cause, as if it had been expresly referred to his umperage: *The Lord* (saith he) *hath been witnesse between thee, and the wife of thy youth, against whom thou hast dealt treacherously: Yet is she thy companion, and the wife of thy covenant, Mal. 2. 14, 15, 16.* (Loe, the wife of thy covenant; therefore too sure setled to be turn'd off upon every sleight occasion; what? was thy covenant to take her for thy wife till thou shouldst dislike her? what were this but to mock God, and the world? thy covenant implies no lesse then firmitude, and perpetuity.)

There-

Therefore take heed to your spirit; and let none deal treacherously against the wife of his youth: For the Lord the God of Israel saith that he hateth putting away; For one covereth violence with his garment, saith the Lord of hosts: Therefore take heed to your spirit that you deal not treacherously. What is this treachery, which the Prophet cryes out against, thus vehemently thrice over, with a breath; but pretended and unjust suggestions against a lawfull wife for her undue divorce? and what is that violence, but the injurious execution of those suggestions? upon which insufficient grounds the Lord professes to hate putting away.

Yea how apparently contrary is this practise to the very originall institution of marriage it selfe? He that made it in paradise ordained thus: Therefore shall a man leave his father and his mother and shall cleave unto his wife.

wife; and they two shall be one flesh:

Gen. 2. 24. Loe before ever there was father, or mother, or son in the world, God hath appointed that the bond betwixt husband and wife shall be more strait and indissoluble then betwixt the parent, and child; and can any man be so unreasonable as to defend it lawfull, upon some unkinde usages, or thwartnesse of disposition, for a parent to abandon and forsake his child; or the sonne to cast off his parent: much lesse therefore may it be thus betwixt an husband and wife:

They two are one flesh: Behold here an union of Gods making: A mans body is not more his owne, then his wifes body is his: And will a man be content to part easily with a peece of himselfe: Or can we thinke that God will indure an union made by himselfe to be so sleightly dissolved: Or how is this bodily matrimony a lively image of the spirituall marri-

age

age betwixt Christ and his Church (who hath said, *I will betroth thee unto me for ever; Yea I will betroth thee unto me in righteousness, and in judgement, and in loving kindness, and in mercies, Hos. 2. 19.*) if upon small occasions it may be subject to utter dissolution: Yea, what speake I of Divinity? Even modest Heathens would hisse this Libertinisme off the stage: Amongst the rest, what a fool was *Socrates*? The Oracle, belike, called him the wisest man of his time, but what a foole was he to indure the unquiet clack of his *Xantippe* with such coole patience, if he might have quit himselfe of the trouble with a sodaine act of her dismissal? Or what use was there of those Delegates of *Athens* and the *Harmosyni* of *Lacedaemon* for the peeing up of these domestique breaches betwixt husband and wife, if the imperious husband had power to right himselfe by

by turning the scold out of doores :

Lastly, what silly counsaile was that which the Jewish Rabbi gave to his client, matcht with a shrew ; *The bone that is fahne to thy lot, that doe thou gnaw upon* ; if it were altogether free for him to leave that bone, and take another ?

But I have dwelt too long on so grosse a subject : There may yet seeme some better colour for the plea of the Romish doctors which admit infidelity and heresie into the ranke of those causes which may warrant a divorce : But herein the ambiguity of the word (if heed be not taken) may deceive you ; The * Hebrew text, to which our Saviour alludes, uses a word which signifies excision, or cutting off ; The Greek, a departing away, or putting off ; The Latine, *Divortium*, in his true sense is not so hainous as either of the other, signi-

* *Dent. 24. 1.* כרת βιβλίον διασσειν.

ſying rather a turning aſide, but in our ordinary acception amounts to no leſſe then both. But what unjuſt difference they make betwixt ſinall ſeparation and diſſolution, we ſhall finde in our next diſcourſe: Onwards, that ſuch ſeparation may not be made of man and wife (lawfully joined together) for hereſie, or miſbeleefe; we need no other conviction then that peremptory and cleare determination of our Saviour which we have formerly inſiſted on: For though his words on the mount were in a way of doctrinall aſſertion, yet afterwards, the ſame words were uſed by him, in way of a ſatisfactory answer to the Pharifeſes queſtion concerning cauſes of divorce; profeſſedly reſolving that there could be no allowable ground of ſuch ſeparation except fornication. What words can be more plaine? It is but a ſhift to ſay (as the Cardinall doth) that our Saviour

viour here meant only to expresse the proper cause of the separation of married persons; which is the breach of marriage faith: as having no occasion to speak of those generall grounds which reach to the just sundring of all humane societies; such as Heresie and Infidelity; which are enough to unglew all naturall and civill relations betwixt father and son, master and servant, husband and wife: For it is clear that neither question nor answer were bounded with any particularities; The Pharisee asks, *Whether for every cause*; Our Saviour answers, *For no cause but fornication*; And it is spoken beside the book, that child or servant should or may forsake parent or master in case of Heresie, or Infidelity: S. Paul teacheth other Doctrine: *Let as many servants as are under the yoke (of bondage) count their (infidell) masters worthy of all honor*; 1 Tim. 6. 5. not worthy

thy therefore of deſertion, and diſclama-
tion: And if the ſervants may not
ſhake off the bonds of duty; much
leſſe may the ſonne break or file off
the bonds of nature; and as for the
matrimoniall knot, how too ſure it is
to be looſed by infidelity it ſelfe, let
the Apoſtle ſpeak; *If any brother hath
a wife that beleeveth not, and ſhee be
pleaſed to dwell with him, let him not
put her away, 1 Cor. 7. 12. And the
woman which hath an husband that be-
leeveth not, and if he be pleaſed to dwell
with her, let her not leave him, ver. 13.*
And if even Infidelity have not
power to diſ-oblige the wife or huſ-
band, much leſſe, Hereſie: In this pre-
tended caſe therefore to ſeparate
from board and bed, is no better then
a preſumptuous inſolence; It is the
peremptory charge of Chriſt. *What
God hath joyned together, let not man
put aſunder, Mat. 19. 6.* In all lawfull
marriages, it is God that joynes the
hands

hands and hearts of the Married. How dare man then undoe the work of God upon devises of his own? Had the Lord ever said, If thy wife be a wilfull mis-believer, rid thy hands of her; this separation were just; but now that his charge is clean contrary, what an impious saucinesse is it to dis-joyne those whom God hath united?

As therefore, it is not in the power of any third person, upon any whatsoever pretence, violently to break the sacred bond of Marriage; so neither may the husband, or wife, enthrall each other by a wilfull desertion; whether upon pretext of religion, or any secular occasion; In which case what is to be done must come under a further disquisition; Certainly it was never the intention of the holy and wise God, by vertue of that which was ordained for mans comfort, and remedy of sin, to bind him

him to a remedlesse misery; which must necessarily fall out, if upon the departure of an unbeleeving, or hereticall yoke-fellow, the relict party must be tyed up to a perpetuall necessity of either containing, (if he can) or, if he can not, of burning; The wise Doctor of the Gentiles well fore-saw the dangerous inconvenience that must needs hereupon ensue, and hath given order for prevention, accordingly.

But if the unbeleeving depart, let him depart; *A brother, or a sister is not under bandage in such cases; but God hath called us to peace, 1 Cor. 7. 15.* Not, that it is free for a man or woman so forsaken, to carve him, or her selfe of redresse (what an infinite confusion would follow upon such licentiousness;) but that after long and patient expectation, and all probable means used for the reduction of the party deserting, recourse be had (as to the
last

last refuge) to publique Ecclesiasticall authority (which is the fittest to manage these matrimoniall affaires, in whose power it may be, either by grave admonitions, and just censures to bring back the offender to his duty; or upon his continuing contempt, to set a day for the publication of the just freedome of the forsaken: wherein they shall doe no other then execute that Apostolike sentence for exemption from an unjust bondage, and providing for a just peace.

CASE III.

Whether after a lawfull Divorce for adultery, the innocent party may marry againe.

Although Matrimony be not, according to the Romish tenet, one of those Sacraments which imprint an indeble Character in the
re-

receiver; yet it hath, as they hold, such a secret influence upon the soule, as that it leaves a perpetuall bond behind, it, never to be dissolved till death; So as those offenders, which by just censure are separated from the board and the bed, cannot yet be freed from the bond of marriage: upon this ground it is that they barre the innocent party from the benefit of a second marriage, as supposing the obligation of the former, still in force. In the ordinary Bills of the Jewish divorce, the repudiated wife had full scope given her of a second choice; as the words ran: * *She was to be free, and to have power over her owne soule; to goe away; to be married to any man whom she would.* They were not more liberall, then our Romish divorcers are niggardly: The Jewish divorce being upon unwarrantable cause, made their liberality

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so much more sinfull, as their divorce was more unjust: for the divorced woman was still in right the lawfull wife of that unrighteous husband that dismissed her; the Romish doctrine makes their strait-handedness so much more injurious, as the cause of separation is more just.

Even this question also is expressly determined by our Saviour in his answer to the Pharisee: *Whosoever shall put away his wife except it be for fornication, and marrieth another, committeth adultery*: Mat. 19. Lo then, he that for so just a cause as fornication putteth away his wife and marrieth another, committeth not adultery: the exception manifestly implies so much, both in reason and common use: neither indeed, are the words capable of any other probable sense: That which *Bellarmino* would fasten upon it, referring the exception to the former clause, of

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diſmiſſion onely, ſo as it might be lawfull to divorce onely for fornication, but not to marry after divorce; cannot ſtand without a ſupply of words of his owne, which God never allow'd him to interſert; and beſides utterly deſtroies the ſenſe; caſting ſuch a doctrine upon our Saviour, as he would hate to owne; for except that reſtraint be referred to the marrying againe, the ſenſe would run thus, *whoſoever puts away his wife commits adultery*; which ſtands not with truth or reaſon: ſith it is not the diſmiſſion, that is adulterous, but the marriage of another: It is therefore the plaine drift of our Saviour, to teach the Phariſee, that the marriage of a ſecond wife (after diſmiſſion of a former, upon any other cauſe except for fornication) is no leſſe then adultery: thereby enforcing, that upon a juſt diſmiſſion for fornication, a ſecond marriage cannot be branded with adultery. Neither

Neither will it serve his turne,
which he would borrow from *S. Augustine*, that upon this negative of
our Saviours, we may not look to
build an affirmative of our own; for
though it be granted, that he, who
putting away his wife not for fornication,
and marrieth another, sinneth;
yet it followes not that he who ha-
ving dismissed his wife for fornication,
marrieth another, sinneth not at
all: A sinne it may be, though not an
adultery: For surely if it be a sinne,
it must be against a commandement;
and if against any commandement,
it must be against the seventh; and
what is the seventh commandement,
but *Thou shalt not commit adultery*?
Besides, the Pharisees question [*Is it
lawfull for a man to put away his wife
for every cause?*] was not without a
plaine implication of liberty to mar-
ry another; which our Saviour well
knowing, gives a full answer as well

to what he meant, as what he said; which had not been perfectly satisfactory, if he had onely determined that one part concerning dismissal, and not the other concerning marriage; which clause if two other Evangelists expresse not, yet it must be fetcht necessarily, from the third; since it is a sure and irrefragable rule; *That all four Evangelists make up one perfect Gospel.* It is therefore a very tottering and unsure ground which our Rhemists build upon; as if the Apostle meant to crosse his Lord, and master, when he saith, *The woman which hath an husband is bound by the law to her husband, so long as he liveth, Rom. 7.2.* therefore only death can dissolve the bond of marriage; not divorce, not adultery, not divorce for adultery: For how plainly doe the words carry their answer in themselves: * *The woman* (saith the

* So also 1 Cor. 7. 39. *BHITON*
 Apostle)

Apostle) *that hath an husband*: but the woman legally divorced for fornication, hath no husband: S. Paul speakes of a true wife, not a divorced harlot: He had no occasion here to look aside at matter of divorce, but takes marriage as in its entire right; rather desiring to urge (for clearing the case of our obligation to the law) that the husband being once dead, the wife is free to marry againe, then to intimate the case of her incapacity to marry till he be dead.

As for that bond therefore, which is so much stood upon, if it be taken without all relations to the duties of bed, and board; it is meerly Chimericall, nothing but fantasie. There are, or should be Bonds of affection; Bonds of mutuall respects, and reciprocall duties betwixt man and wife; and these must hold firme notwithstanding any locall separation; neither time, nor place may so much

as slacken, much lesse loose them: but, where a just divorce intervenes, these bonds are chopt in peeces, and no more are, then if they had never been: And if all relations cease in death, (as they doe, in whatsoever kind) surely divorce, being (as it is) no other then a legall death, doth utterly cut off (as the Hebrew terme imports) all former obligations and respects betwixt the parties so finally separated.

The adulterous wife therefore duly divorced being thus dead in law as to her husband, the husband stands now as free as if he had never married: so as I know not why the Apostle should not as well speak to him as to any other; when he saith: *Nevertheless to avoid fornication, let every man have his own wife, 1 Cor. 7. 2.* Neither is it otherwise in the case of a chaste wife after her separation from an adulterous husband, *Mar. 10. 12.* In these

these rights God makes no difference of sexes; both may lawfully claime the same immunities: which certainly should they be denied to either, must needs draw on very great inconveniences: For in how hard a condition should the innocent party be hereupon left? Either the husband, or wife must be forced to live with an adulterous consort; or be tyed to a perpetuall necessity of either doing that (which perhaps they cannot doe) containing; or of suffering that which they ought not to indure, burning.

What remedy now can be expected of so great a mischief? Our Romish Doctors propose two; Reconciliation, or Continnence: Both good, where they may be had; Reconciliation, in case of a seasonable and submissive repentance; That which is the Apostles charge in case of desertion, holds here also, [*καταλείψας*] let her

be reconciled; the more hainous the wrong is, the more commendable is the remission.

Continence, after such separation, in case of ability so granted: for surely this holy disposition is a gift; and therefore is not had, where it is not bestowed; those that place it in our power, derogate from the thanks of the giver: yea, he that gives it tells us *all cannot receive it*: *Mar. 19. 11.* he must not only give it, but give us power to take it.

But where the offending party is obstinately vicious; and the innocent (after all indeavours) unable to containe, without a supply of Marriage, the case is remediable; and we know Gods mercy such, as that he leaves no man for matter of resolution utterly perplexed.

Shortly then, I doubt not, but I may (notwithstanding great authorities to the contrary) safely resolve, that

that in the case of divorce it is lawfull for the innocent person to marry ; But for that I find the * Church of *England* hitherto somewhat tender in the point ; and this practice, where it rarely falls, generally held, though not sinfull, yet of ill report, and obnoxious to various censures : I should therefore earnestly advise, and exhort those whom it may concerne, carefully, and effectually to apply themselves to the fore-mentioned remedies : Reconciliation, if it be possible, to prevent a divorce ; Holy indeavours of a continued continence, (if it may be obtained) to prevent a second marriage after divorce : But if these prevaile not, I dare not lay a load upon any mans conscience which God hath not burdened ; I dare not ensnare those whom God will have free.

* Decreeing to take bonds of the persons divorced to remaine single. Can. & Constit. c. 107.

CASE IV.

Whether the authority of a Father may reach so farre as to command or compell the Child to dispose of himselfe in Marriage where he shall appoint.

THe extent of a paternall power, as we have partly showed already, hath been wont to be very large; reaching in some cases by the Civill law to the life of the Child; and by the Jewish law, to his liberty: so as it might seeme much more over-ruling in case of Marriage; which also seemes to be intimated by the Apostle in that he supposes, and gives a power to the parent either *to give or keep his virgin*. And how apt parents are to make use of this awfull authority in matching their children for their owne worldly advantage, contrary to their affections and disposition,

position, we have too lamentable experience every day; neither is it easie to set forth the mischievous effects that have followed upon those compelled marriages: for hence ensue perpetuall discontentments to the parties so forcedly conjoynd; an utter frustration of the end of marriage, which should be mutuall comfort: and not seldome, dangerous machinations against the life of the disaffected consort; as it were too easie to instance every where; but especially, if the affections of the young couple have been before (as it oft falls out) plac'd elsewhere; what secret heart-burnings; what loathing of conjugall society; what adulterous plottings doe straight follow; what unkind defiance passe between them: how doe they wear out their dayes in a melancholick pining, and with each other, and themselves dead too soon? Yea herein an imperious or covetous parent

parent may be most injurious to himselfe, in robbing himselfe of that comfort which he might receive from a dutifull child in her person, in her posterity: For the avoiding of which mischiefs it were meet and happy, that both parent and child could both know their limits, which God, and nature hath set, and keep them.

Let the child then know that he is his parents, that as he was once a part of them, in respect of his naturall being, so he should be still in his affections, and obsequiousnesse, and therefore that he ought to labour by all meanes to bring his heart unto a conformity to his parents wil and desire, according to that universall rule of of the Apostle, *Children obey your parents in all things; for this is well pleasing unto the Lord: Colos. 3. 20.* The word is comprehensive, *In all things.* Things unlawfull passe for impossible; we only can doe, what we ought;
In

In all those things then which are honest, lawfull, just, parents must be obeyed: And the motions for marriage being such, impose upon the child so farre a duty of obedience as that he is bound to worke his affections what he may, to a compliance with his parents will: the wilfull neglect whereof is no better then a kind of domestique rebellion.

Let the parent againe consider, that the child however derived from his loines, is now an entire person in himselfe; that though the body came from him, yet the soule was from above; that the soule of his child is endowed with powers, and faculties of its own; that as he is not animated by his parents spirits, so he is not inwardly swayed by his parents will or affections; that when his reason comes to be improved, there may be differences of judgement betwixt his parent and him; and from thence may
arise.

ariſe a diuerſity or contrariety of affection and deſires; and theſe affection and paſſions may grow to ſuch ſtrength as that he himſelfe ſhall not be able to maſter them; and if the parent ſeele himſelfe ſubject to ſuch infirmities, well may he be induced to pity thoſe whom a vigorous heat of youth hath rendered more headſtrong and unruly; withall, let him conſider that though the child ſhould be adviſed by the parent, yet it is fit that he ſhould like for himſelfe; that the will is to be led, not driven; that no marriage can be happy, but that which is grounded in love; that love is ſo altogether voluntary, that it cannot conſiſt with conſtraint.

Laſtly, let him know that the power of the father though great, yet is not unlimited; It is the charge which the father of mercies hath laid upon all earthly fathers, in their carriage towards their children; *Fathers, pro-*

voke

wake not your children to wrath, (or (as the * Vulgar reads it) to indignation,) lest they be discouraged: and surely, if there be any thing, wherein the passion of the child may be like to be inordinately stirred, it is in the crossing of an once-well-settled affection; and diverting the streame of love into another channell; For the avoiding whereof the Imperiall lawes have been so indulgent to the child; as that (according to their best glosses) they permit not the father to disinheris the daughter for choosung an husband, not unworthy of her selfe, though against her fathers minde; yea some of them have gone a step further; but I forbear: How far it may be lawfull, and fit for the parent to punish the dis-respect of a child, in so important a case, is not for me to determine; doubtlesse where the provision

* *Mit wadeggyßere, Eph. 6. 4. Mit igeßßere, Colos. 3. 21.*

is arbitrary, the parent will be apt so to manage it, as to make the child sensible of a disobedience; so as both parts herein suffer, and are put into a way of late repentance.

Briefly therefore, on the one side the Sonne or Daughter doe justly offend, if without cause, or wilfully they refuse the Parents choice; and are in duty bound to work their hearts to an obedient subjection to those, unto whom they owe themselves; and for this cause must be wary in suffering their affections, to over-runne their owne reason, and their parents guidance; either suppressing the first motions of unruly passions, or if they grow impetuous, venting them betimes into the tender cares of their indulgent Parents, or discreet and faithful Friends; that so they may seasonably prevent their owne misery, and their Parents grief: On the other side the Parent shall offend,

send, if holding too hard an hand over the fruit of his own body, he shall resolve violently to force the Childs affections to his own bent; and where he finds them settled will rather break then bow them; not caring so much to perswade as to compel love: These harshnesses have too much of the Tyrant in the, to be incident into a Christian Parent; who must transact all these matrimonial affaires in a smooth and plausible way of consent, and indulgence: A noble and ancient pattern whereof we finde in the contract betwixt *Isaac* and his *Rebecca*; *Gen. 24. 49, 50, 51, 52*, &c. the match was treated on betwixt *Abrahams* proxie, and the maids father *Bethuel*, and her brother *Laban*: The circumstances drew their full consent; all is agreed upon betwixt Parents; but when all this is done, nothing is done, till *Rebecca* have given her assent; they said, *We will call the damsell, and enquire at her mouth*

mouth, ver. 57. And they called Rebecca, and said unto her, Wilt thou goe with this man? And she said, I will goe, ver. 58. Now the contract is made up; till then, all the engagements of Bethuel and Laban were but complements; Till then, all the rich Jewells of Gold and Silver given to the intended Bride; and all the precious things given to her mother, and brother, were but at the mercy of the receivers; Neither ought it to be other in all Christian espousalls; the free and cheerfull consent of Parents and parties makes the match both full, and happy; Let not the Child dare to crosse his Parents; let not the Parent think to force the Child; and when an undue bargain is, through the heat of passion, made up past reclamation, let love and pity so far intercede for the offenders, that they may smart for their rashness and neglect, without their utter undoing.

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CASE V.
Whether the marriage of Consens-Germans, that is, of Brothers or Sisters Children, be lawfull.

THe displeasure of the Canon law against such marriages is so high flowne, that no lesse can take it off then an utter diremption of them even though they be not ratified only, but consummate by carnall knowledge: and the grave authority of some Ancient and holy Fathers, and eminent Doctors of the Church, (besides five severall Councells) have passed an hard sentence upon them. The maine ground of the supposed unlawfulness, is, that clause of Gods Law which was more then judicall: *No man shall approach unto any neare of kin to his flesh to uncover their nakednesse, I am the Lord, Levit. 18. 6.* which though *Cornelius*

nelius à Lapide * (following his *Radolphus*) would seeme to restraine to the ensuing particularities onely ; yet they may not thinke that God will suffer so universall a charge to be so straitly pent ; especially, when we know that there are divers other no lesse unlawfull copulations omitted in this black Roll of uncleanneses, then those which are expressely mentioned ; the rest being intended to come in by way of analogy onely : for it is easie for any reader to observe, that all the severallities of the degrees prohibited run still upon the male ; under which, if the like exorbitances of the other sexe were not meant to be comprehended, females should be lawlesse, and the law imperfect ; To marry then with a Cousen-german is apprehended by these Canonists to be an approach to *one near kinne to our flesh* ; and there-

* *Cor. à Lap. in locum,*

fore intimated in that inhibition: Doctor * *Willet* (a man much deserving of Gods Church) conceives these marriages to be analogically forbidden, in this catalogue of *Moses*: For, saith he, if the degrees of affinity be limited to the third or fourth degree; as it is not lawfull for a man to marry his wives daughters daughter (*Levit* 18. 17.) why should not the line of consanguinity hold to the fourth degree likewise; and so neither the sonne to marry his fathers brothers daughter; or the daughter the sonne? But that worthy Divine did not heedfully observe the great difference betwixt these instanced degrees; for the one of these is an equall line, the other in an unequall; the one is a collaterall consanguinity, the other is in a directly descending affinity; so as the husband should be grandfather in law to the wife, which

* *Will. Syno. Controver. 15. de. Mart. q. 3.*

in

in all reaſon were very unlawfull, and abſurd; ſince in all thoſe deſcending degrees there is a kinde of reverentiall inequality betwixt the lower and ſuperiour, which abhorres from all proportion of a match; whereas the collaterall equidistance of couſengerman from the ſtock whence both deſcend, hath in it no ſuch appearance of inequality. Certainly then, no analogy can draw theſe marriages within the prohibition; whether the nearneſſe of approach to our ſelfe be a juſt barre unto them, muſt be further conſidered.

Gregory⁸; (whom ſome would ſaine intereſſe in our Engliſh Apoſtleſhip) writing to his *Auguſtine*, in way of answer to his Interrogations, puts theſe marriages in the ſame rank with the marriages of brothers and ſiſters, which he brands with this note, that they ſeldome ever prove

* Greg. reſp. ad Interrog. Auguſtini. q. 6.

fruitful ; As for those of brothers and sisters, (which were usuall, as *Diodorus Siculus* tells us) amongst the *Egyptians*, and are this day in use in barbarous nations) nature it selfe abominates the mention of them ; In the first plantation of the world there was a necessity of them ; as without which there could have been no humane generation ; but afterwards, as the Earth grew more peopled, so these matches grew still more odious : like as it was also in the first plantation of the Church ; the holy Seed being confined to a narrow compasse, were forced, unlesse they would joyne with Infidels, to match sometimes over near to themselves ; as even *Abraham* himself, the father of the faithfull, married his brothers daughter : but when the bounds of men and beleivers came to be enlarged, the greater elbow-room opened a wider liberty of choice, and now
Gods

Gods select people found it meet to observe a due distance in the elections of their wives; so regarding the entirenesse of their Tribes, as that they fell not within the lines of prohibition; wherein no mention being made of brothers and sisters children, in all ages and nations, some have thought fit to make use of their freedome in this kind.

What need I to urge the case of *Zelophehads* five daughters, *Num. 36. 11.* who by Gods own approbation, were married to their fathers brothers sonnes; To mince the matter, and to make these sonnes, nephewes, according to the Hebrew phrase (as *Doctor Willet* indeavours to doe) is without either need, or warrant; since these scruples were not since that time stood upon by the Jewish people: yea this practise was no lesse current among the civiller heathens of old; I could tell you of

Cluentia

* *Cluentia* (by *Cicero's* relation) married to her cousin *Marc. Aurins*; of *Marcus Antonius* the wise and virtuous Philosopher, marrying his cousin *Faustina*; and a world of others; were not this labour saved me by the learned lawyer *Hotoman*, who tells us how universall this liberty was of old, as being enacted by the lawes of the Roman Empire; and descending to the lawes of † *Justinian*; confidently affirms that for five hundred yeares, all Christian people (*magno consensu*) allowed and followed these Imperiall constitutions concerning Matrimony: Although I might here put him in minde of *Theodosius* enacting the contrary in his time; as it is like, by S. * *Ambroses* instigation; who then sharply inveighed against these matches in a ve-

* Cic. orat. pro Cluentio. † Hotoman de grad. cognat. Laurent. Kirchovius profel. Rostoch. in consil. Matrimon. * Amb. ep. ad Paternum. 66.

hement epistle to *Paternus*, being then in hand with a marriage betwixt his sonne and his sisters daughter; But excepting that good Emperour, the coast was cleare perhaps, for the Cæsarean constitutions; not so for the judgement of Divines; amongst whom, it were enough that *S. Ambrose*, and *S. Augustine* (the flower of the Latine fathers) if no other, doe bitterly oppose it: This judgement being found not probable onely, but exceeding profitable to the Roman See, it is no wonder if it obtained both credit and vigour from thence. Decrees and Decretalls make this inhibition good, not without damning the contrary practise; and now the Civill and Canon lawes clashing with one another, how can it be but the prevalence must be according to the power of the abettor? What liberty the Court of Rome hath taken to it selfe in the restraint of marriages,

ges, and upon what ground ; all Christendome both sees, and feels : One while their prohibition reaches to the seventh degree in naturall kindred ; then to the fourth : One while the impediment of spirituall cognation, is stretched so far, without any colour of divine authority, as that (what by * Baptisme, what by Confirmation) twenty severall persons are excluded from the capacity of inter-marriage ; another while the market is false to fourteene : And wherefore this ? but for the sweet and scarce valuable gaine of Dispensations, upon these occasions flowing into the Lateran Treasure ? For which considerations we have learned not to attribute too much to the judgement or practise of the Roman Courtiers in this point. Upon the summing up

* *Hodie cessat fraternitas & aliqua ex parte compaternitas per concilium Trident. Sess. 24. Navar. c. 22. n. 27.*

then of this discourse, will you be pleased to see the vast latitude of different opinions concerning these marriages: The Canon law decryes them with such rigour, as to ordaine them (though after a conjugall conversation) separated; some moderate Divines (as Doctor *Willer*) finding this sentence too hard, goe not so far; but hold this nearnessse of blood a sufficient barre to hinder a marriage contracted, though not consummate: some others (as M. *Parkins* in my conference with him) hold it, though not unlawfull, yet inconvenient: some others, (as learned and acute M. *Wootton*, and M. *Atter-fell*, who hath written a very large discourse in way of vindication of them) hold them both lawfull, and not inexpedient; * *Hotoman* yet higher, *pium & Christianum esse, quod du-*

* *Hotoman* de vita matrimon. p. 6. citante *Kirchovio*, ut supra.

arum fororum liberi matrimonio copu-
luntur; that such a marriage is pious
and Christian: In all this variety if
you desire my opinion, I shall nei-
ther censure such marriages where
they are made; nor yet discourage
them to be made, where they are not:
To those that are free I should be apt
to suggest counsailes of forbearance;
the world is wide, the choice abun-
dant; let it be never so lawfull, yet
how unwise and unsafe were it to put
the conscience upon the nicety of a
dangerous scruple, when it may keep
aloof off, with a cleare freedom, and
resolute contentment: That these
marriages are disallowed by so great
authority, should be reason enough
to divert the free thoughts to a safer
election: and againe, that these mar-
riages are allowed both by Civill
lawes, and by the judgement of emi-
nent Divines; and not any where
forbidden either (*Jure Casareo* or

Apoſtolico) by Gods law or *Ceſars*, ſhould be reaſon enough to beare up the hearts of thoſe who are ſo matched, from a ſcrupulous dejection. Let the perſons therefore ſo married enjoy themſelves with mutuall complacencie and comfort, not diſquieting themſelves with needleſſe anxieties; Let thoſe ſingle perſons who have the world before them looke further off; and faſten their affections at a more unqueſtionable diſtance: As it was wont to be worthy *M. Perkins* his expreſſion to this purpoſe; Let thoſe who muſt walk cloſe to the brim of a ſteep precipice, look well to their feet, and tread ſure, and ſo they may come off perhaps as ſafely as thoſe that are further off; but if a man be to chooſe his way, let him ſo caſt it, as that he may not approach neare to the brink of danger.

CASE VI.

Whether is it necessary or requisite there should be a witnessed contract, or espousals of the parties to be Married, before the solemnization of the Marriage.

IT is necessary we should distinguish betwixt those things which are essentiall to the very being of marriage, and those which are requisite to the orderly, and well-being of it: It may not be denyed that the Marriage is true and valid, which with full consent of parties is made without the intervention of a previous contract in a due and lawfull forme prescribed by the Church: but it is no lesse true that such a marriage is very unmeet, and liable to just exceptions: That God*, who is the author and institutor of Marriage made a difference

* Exod. 22. 16. Levit. 19. 20. Deut. 10. 7.
Deut. 22. 25. 23. 28. Jer. 2. 2.

in his law, betwixt a bethrothing, and a matrimony; he that ordained the one, ordained the other also; and ordained the one in order to the other: And this was constantly observed in the practise of Gods ancient people accordingly: so we find the * Blessed Virgin espoused to *Joseph* before his taking her to wife; neither did the Christian Church think fit to vary from so Holy a pattern; where-to S. * *Paul* alludes, when writing to, and of the Church of *Corinth*, (which he had happily planted, and forwarded in grace) he saith, *I haue espoused you to one husband, that I may present you as a chaste virgin to Christ.* Loc he hath betrothed them to Christ in that he had entred them into a Covenant of grace, and prepared their soules for a full consummation of their blessed union with

* Compare Mat. 1. 18. with Deut. 22. 23. † *Magdeburg. Cent. 2. de Coniugio. 2 Cor. 11. 2.*

Christ in glory; intimating (as Matrimony is a lively resemblance of our spirituall conjunction with the Lord of Glory) that our bodily espousals here below, are they which must make way for a complete marriage ensuing: It were not difficult, if it were needfull, to deduce this holy practise downe from the primitive times to the present: Before the *Nicene* Councell we finde the Synod of **Ancyra* enjoying a severe penance to the man that should defile his body by an incestuous copulation, after espousals contracted: And the Councell of *Eliveris* or *Granada*, about the time of the *Nicene* convention, takes such notice of these heinous things, as that it decreed†, that if any Parents should break the faith mutually engaged in these espousals, they should be held off during the space of three yeeres from the Com-

* Concil. Anciran. can. 24. † Concil. Eliv. c. 45.

munion. What should I trouble you with the Decree of * *Syricius* concerning these contracts; or with the pregnant testimonies of *S. Chrysostom* and *Ambrose* to this purpose; which were but to waste time and paper upon so clear a Truth? As there was no Christian Church which did not carefully observe this sacred Rite: so above all other the Roman hath been at least curious enough in calling for a strict and severe account of their espousalls: what voluminous discourses, what a world of nice questions have fallen from the pens of their Canonists, and Casuists concerning this subject? Certainly this is a point of so much use and agitation amongst them, that were it not for the quarrels arising here from, it is to be feared their consistories would want work, and their Advocates employment: But to speak ingenuously,

* Luitbrand in Syric.

those

those of the Roman Clientele are not more carefull and punctuall in scanning, and observing the rules and practise of their espousalls, then ours here, are incurious of both: How many have we heard to say, they will make no promise of themselves till they come to the Church-dore: and of those that do contract themselves, how weakly and insufficiently is it performed on many hands: so as their act, if questioned, is no way obliging; nor such as upon the least discontent, will indure a contestation.

Now whereas there is a double contract, or espousall, the one of the future; the other of the present: that of the present, if it be expressed in full termes, differs nothing from marriage it selfe, save onely in the publique solemnization, which doubtlesse is a ceremony so requisite, as that without it an horrible confusion must needs

needs follow both in Church and State.

That of the future, is a mutuall engagement of both parties that they will marry each other; which is most properly an espousall-contract; giving both assurance to each other of a mutuall consent to a Matrimony that shall be; and yet withall some meet respiration of a more full triall, and inquiry into each other condition: For which purpose the wisdom of the Church hath ordained that there should be a solemn publication of that more private Contract three severall Sabbaths, to the whole Congregation; not without the earnest charge of a discovery of whatsoever impediment might justly hinder the intended matrimony.

The frequent, but unfit, use of these Espousall contracts in the Roman Church, betwixt their children

in

in minority (allowing * seven yeares in either party for a meet age to this purpose) must needs breed both much question, and inconvenience; but in those which are of a mature age, and therefore able to judge of what may be most expedient for themselves, this institution cannot be but singularly usefull and beneficiall: For neither is it meet that so great a worke, and so highly importing us as matrimony, should be rashly and suddainly undertaken; neither doth it a little conduce to our safety, that since marriage once passed, is irreverfible, we may have some breathing-time betwixt our promise and accomplishment to informe our selves thoroughly before it be too late, what we must trust to for ever. For we may take notice, that though marriage is

* *Ætas legitime contrahendi matrimonium, est in masculis 14 annos, in feminis 12; Sponsalibus autem contrahendis, septem in utrisque, Narar. c. 22. n. 28.*

indissoluble, yet these espoufalls, or contracts of a future marriage, are not so: many things may intervene betwixt this engagement by promise, and that full and compleat, solemnization, which may breake off the match.

The Casuists determine of seventeen severall cases, at the least, which may sort to this effect; some whereof have a proper relation to the Romish religion; others are common to what ever contracts of this kind; I shall not grudge you the mention of them all. An espoufall-contract therefore may (according to their judgement) be broken off

By the willing remission of both parts, although it had been seconded by an oath: By the entrance of the one party into some order of religion: By a contract with some other in words of the present: By the traivale of one of the parties into remote countries

countries, and not returning upon a lawfull summons at a time prefixed by the Judge: By an affinity supervening upon the sinfull copulation of one of the parties with the neare kinswoman of the other: By the absolution of the Judge upon suit of one of the parties repenting and pleading minority: By lapse of the time set for the accomplishment of the marriage by the disease of one of the parties being fallen into palsie, leprosie, the Neapolitan sicknesse, or any other contagious distemper, or notable deformity: By the fornication of one of the parties committed since the contract: By a vow of chastity preceding the contract: By some capitall enmity intervening betwixt the families and persons of the contracted by the omission of performing the promised conditions; as when the dowry agreed upon, is retracted, or held off: By the same of

a Canonically impediment; By susception of Orders after contract; By the supervision of a legall kindred, unexpected; By the harshnesse and asperity of disposition in either party: And (which may comprise many other particularities) by the falling out and discovery of any such accident, or event, as if it had bene sooner knowne would have prevented the making of such a contract; All these, say they, may barre a marriage after espoualls: but yet so, as that the parties may not be their own arbiters, to break off their contracts at pleasure, but must have recourse to the Judge Ecclesiasticall; and submit themselves to the over-ruling sentence of the Church.

If you baulk those which are proper to the Romish superstition, yet you shall finde many just and allowable causes which may (after a contract of espouall) interrupt a purposed matri-

matrimony: so as, if there were neither rule, nor example of any such preceding engagement, yet surely, it were very fit for our owne security, and our confident and comfortable entrance into that estate which we shall never put off, to observe carefully this previous betrothing of our selves, ere we knit the knot that can never be loosed.

CASE VII.

Whether there ought to be a prohibition and forbearance of marriages, and marriage duties for some appointed times.

IT is one thing what is lawfull, another thing what is fit and expedient, as *St. Paul* hath taught us to distinguish: marriage being of Gods owne institution, and that in the perfection of Paradise, there can be no time

time wherein it may be unlawfull to celebrate it; yet there may be times wherein it is unfit: There is the like reason of times and places; both of them are circumstances alike; The debt of the marriage-bed not onely may, but must be paid by them whom God hath called to that estate; yet there are places, wherein it were barbarous and piacular to defray it: even, besides those places which are destin'd to an holy use, the Jewes of old held this act done in the field or under a tree, worthy of scourging: * Doubtlesse, there are times so wholly consecrated to devotion, as that therein it would be utterly unseasonable to let our thoughts loose to the most lawfull pleasures: Hence is that charge of the Apostle, *Defraud not one the other, except it be with consent for the time, that ye may give yourselves to fasting & prayer: 1 Cor. 7. 5.*

on ed * Maimon. Shicard. de Reg.

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So

So then as *Solomon* himselfe can say,
There is a time to embrace, and a time
to refrain from embracing : *Ecclus.*
3. 5. But what the limitation of this
time may be, no small question hath
been raised in the Church of God :
neither doe there want extremities on
both sides : The Church of *Rome*
hath heretofore been excessively large
in her prohibitions ; forbidding the
solemnization of marriage upon
pretence of the holinesse of the great
feasts to be observed ; for the whole
third part of the yeare ; neither doth
the account fall lesse, if we reckon
from the Advent to the Epiphany ;
from Septuagesima Sunday to the
Octaves of Easter ; and from three
dayes before the Ascension to the
Octaves of Pentecost ; all which had
wont to be strictly kept ; besides the
feast of *S. John Baptist* added by
some ; and the foure Ember weekes
by others ; but now of late upon se-
cond

cond thoughts, their Councell of
 * Trent have found it meet to shorten
 the restraint, and somewhat to en-
 large the liberty of the seasons for
 marriage, having exempted the two
 onely solenne feasts of Easter and
 the Nativity, and abridged some
 previous weekes of the former
 and for us how observant our
 Consistories had went to be of those
 inhibitions for their own gain, every
 Almanack can witness. Some wor-
 thy Divines in our Church did not
 stick to professe their great dislike of
 our conforming herein to the Church
 of Rome, to the scandall of the Reformed.
 Concerning both which, I
 must say: that if either we, or they
 doe put any holinesse in the time ex-
 cepted, or any unholinesse in the
 inhibited, we cannot be excused from
 superstition; Can any time be more
 holy then Gods owne day: yet on

of no qu* Concil. Trid. Sess. 24. 21010 y

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that day we doe commonly both publish marriages, and celebrate them. But if, as in some solemne fasts, indicted by the Church for some publique humiliation, we both doe, and injoyne to abstaine from all conjugall society; so in a desire the more devoutly to celebrate the memory of Gods infinite mercy to mankind in sending a Saviour into the world for our Redemption; and of the glorious resurrection of that Son of God for our justification, we shall take off our selves from all worldly cares or delights, I see not why it should not be both lawfull, and commendable.

But, to say as it is, as the Romanists are guilty of too much scruple in this kind, so too many of our own are no lesse faulty in a carelesse disregard of the holiest occasions of restraint; which I would to God it did not too palpably appear in the scandalous

dalous carnality of many (otherwise inoffensive) professors. It is a common practice (which I have long wisht an opportunity to censure) that husbands and wives forget one another too soone: Scarce are their comforts fully cold, ere they are laying for a second match; and too few moneths are enow for the consummation of it. Let me be bold to say, this hast hath in it too much not immodesty onely, but inhumanity: If we look abroad into the world, we shall finde not among Gods peculiar people onely, but even amongst the very Heathens, a meet (and not nigardly) intermission betwixt the decease of the one husband, or wife, and the marriage of another: A whole year was found little enough for the wife to mourne for her husband departed: and so is still amongst the very Chineses, though Atheous Pa-

* Alex. ab. Alex. l. 3. Gen. diet. c. 7. Cod. l. x. tit. 13.

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gans;

gans ; And by the civill Lawes, a woman marrying within a yeare after her husbands death is counted infamous.

It was no short time that * *Abraham* (though now very old) breathed upon the death of *Sara*, (the first of wives mentioned as mourned for) before he tooke *Keturah* ; and yet the Hebrew † Doctors observe that there is a short letter in the midst of that word which signifies his mourning ; to imply (say they) that his mourning was but moderate : I am sure his sonne *Isaac* (*Gen.* 24. 67.) was not comforted concerning the death of that his good mother, till three years after her decease : At which time he brought his *Rebecca* into that tent which even still retained the name of *Sarabs* : whereas with us, after the profession of the greatest dearenesse,

* As appears by comparing of *Gen.* 23. 2. with 25. 1. / תרח בן אברהם *Gen.* 23. 2.

the old polic of the deaths-ring tells what we may trust to; *Dead and forgotten*: Who can but blush to read that some Heathens were faine to make lawes that the wife might not be allowed to continue her solemne mourning for her husband above ten moneths; and to see that our women had need of a law to inforce them so to mourne for the space of one.

In other Reformed Churches there is a determinate time of moneths set, untill the expiration whereof widowes, (especially the younger) are not suffered to marry; it were more then requisite that these loose times were, here with us, curbed with so seasonable a Constitution; but it were yet more happy, if a due regard of publique honesty and Christian modesty could set bounds to our inordinate desires; and so moderate our affections, that the world may see we are led by a better guide then appetite.

C A S E

CASE VIII.

Whether it be necessary that marriages should be celebrated by a Minister; and whether they may be valid, and lawfull without him.

IT is no marvell if the Church of Rome (which holds matrimony a Sacrament, conferring Grace by the very worke wrought) require an absolute necessity of the Priests hand in so holy an act; but for us, who (though reverently esteeming that sacred institution, yet) set it in a key lower, it admits of too much question whether we need to stand upon the terms of a Ministers agency in the performance of that solemn action: There are those in these wild times that have held it sufficiently lawfull for the parties having agreed upon the bargaine before friends and witnesses, to betake themselves to bed:
R others,

others have thought this act of con-joining the married persons in wedlock a fitter act for the Magistrate to undertake. And certainly if there were nothing in marriage but meere nature, it could not be amisse that men and women should upon their mutuall agreement couple themselves together after the manner of brute creatures; And if there were nothing in marriage but meere civility, the Magistrate might be meet to be employed in this service: But now that we Christians know matrimony to be an holy institution of God himselfe; which he not onely ordained, but actually celebrated betwixt the first Innocent paire; and which being for the propagation of an holy seed, requires a speciall benediction; how can we in reason thinke any man meet for this office, but the man of God, set over us in the Lord; to de-
rive the blessings of heaven upon our
heads?

heads : From hence therefore have our wholsome lawes taken a just hint to appropriate this service to a lawfull Minister onely : so as what ever private contract may be transacted in corners betwixt the parties affected to each other , yet the marriage-knot cannot be publicuely knit by any other hand, then Gods Ministers. And herein certainly we have just cause to blesse the wisdom both of the Church and State, which hath so regulated these matrimoniall affaires ; as that they are not onely orderly but safely managed : For doubtlesse were not this provision carefully made, the world would be quite over-run with beastlinesse, and horrible confusion : And in this point we may well give the Church of *Rome* her due, and acknowledge the wise care of her Lateran and Tridentine Councells, which have enacted so strict Decrees against, *Clandestine* marriages, and

R 2 have

have taken ſo ſevere a courſe for the reforming of many ſoul diſorders in theſe matrimoniall proceedings; as may be of good uſe for the Chriſtian world: Had they done the like in other caſes, their light had not gone out in a ſnuffe: As therefore it is generally both decreed and obſerved (not without excellent reaſon) in all Chriſtian Churches, that marriages ſhould be ſolemnized in the publique Congregation of Gods people; ſo it cannot but be requiſite that it ſhould be done by him, who is ordained to be the mouth of the Congregation to God; and the mouth of God to the Congregation; And, as under the Law, the Preiſt was the man, who muſt conveigh bleſſings from God to his people; ſo under the Goſpell who can be ſo apt for this divine office, as he that ſerves at the Evangelicall altar: And if all our marriages muſt be (according to the Apoſtles charge) made

made in the Lord, who is so meet to pronounce Gods ratification of our marriages, as he who is the profest Herald of the Almighty? As it is therefore requisite (even according to the Roman Constitutions) that he who is betruſted with the Cure of our ſoules, ſhould beſides other witneſſes be both preſent and active in, and at our domeſtique contracts of matrimony: ſo by the lawes both of our Church and Kingdome, it is neceſſary he ſhould have his hand in the publique celebration of them. There may then be firme contracts, there cannot be lawfull marriages without Gods miniſters.

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CASE IX.

Whether there be any neceſſity or uſe of thrice publiſhing the contract of marriage in the Congregation, before the Celebration of it; and whether it be fit that any diſpenſation ſhould be granted for the forbearance of it.

THere were amongſt the Jewes certaine ceremoniall Obſervations (beſides the Precepts) which they called the Hedge of the law; and ſuch there cannot want amongſt Chriſtians; whoſe prudence muſt direct them both to the ordaining; and keeping of ſome ſuch expedient rules, as may beſt preſerve Gods lawes from violation: Of that kinde is this which we now have in hand; This publique and reiterated denunciation of * Bannes before matri-

* Concil. Trident. Seſſ. 24. Decret. de Reformat. matrimon.

mony,

mony, is an Institution required and kept both by all the Churches of the Roman-Correspondence, and by all the Reformed; amongst which, as ours, is most eminent, so it hath still expressed the most zeal and care of the due observing of so wholesome a Rite: fix severall * Canons were made in our Provinciall Synod under the Authority of King *James* of blessed memory, in the year 1603. to this purpose; with as strict charges, restrictions, and cautions, as the wit of man could in this case devise; and the late Directory hath found cause to second so usefull and laudable a Constitution; For the convenience, if not necessity, whereof, we need no other argument then the grievous mischiefs that have followed upon the neglect of this ordinance; that one were enough, which is instanced by the Triden-

* Constit. 62, 63, 101, 102, 103, 104.

tine * Synod it self ; that some leud persons having secretly married themselves to one, take liberty to leave that match, and publicquely joyne themselves to another, with whom they live wickedly in a perpetuall adultery ; the frequent practise whereof in those hotter climates we may easily beleieve ; when we see that in our owne more temperate region, the fear of hanging cannot hold some off from so foul a sinne. Let me adde hereunto the late experiments of some odiously incestuous marriages, which (even by the relation of our Diurnalists) have by this meanes found a damnable passage, to the great dishonour of God, and shame of this Church ; And hereupon the sad issues of stolne Marriages, wherein Parents have been most feloniously robbed of their Children, are too feelingly known, and irrecove-

* Concil. Trid. ubi supra.

rably

rably lamented : But as for unfitt-
nesse and inequality of matches, both
for age, and condition, (to the too
late repentance and utter undoing of
both parties) they are so ordinary,
that they are every dayes Occurren-
ces : And all these evils have sensi-
bly growne from the want of these
publique Denuntiatiions of Bannes ;
partly upon the unhappy throwing
open of the fence of discipline, and
partly upon the surreption of secret-
ly mis-gotten dispensations ; And
though that forementioned Synod of
ours seconded by Royall authority *,
tooke the most probable course that
could be conceived (the liberty of
those Faculties being continued) for
the preventing of these abuses ; as the
restraint of the grant of them by any
other, save those who have Episco-
pall authority ; and security to be

* Constit. and Canons ut supra, Can. 101, 102,
103.

given upon good bonds that the coast is cleare from all pre-contracts, suits of law, and prohibited degrees; that the full consent of parents or Guardians is had; that the marriage shall be celebrated in the parish Church where one of the parties dwelleth; and lastly the oathes required of two sufficient witnesses (one whereof knowne to the Judge) that the expresse consent of parents or Guardians goes along with the match intended; and that there is no impediment from any pre-contract, kindred, or alliance: yet notwithstanding all this prudent caution we have by wofull experience found our offices cheated, faculties corruptly procured, and matches illegally struck up contrary to the pretended conditions: Whereas all this mischief might have been avoided, if as no marriage may be allowed but publique; so those publique marriages might

might not be celebrated but after thrice publication of the contract in both the parish Churches where the persons contracted are knowne to inhabite : For so both the Parents of either side cannot but be acquainted with the ingagements of their children ; and if there be any just hindrance, either by precontract, or by proximity of blood , or affinity , it cannot be concealed ; that so the snare of either an unlawfull or prejudiciall matrimony may be seasonably eschewed : To this good purpose therefore it is no lesse then necessary (as I humbly conceive) to be both enacted and observed, that no marriage should be allowed of any person whatsoever (except perhaps the Peers of the Realme, who are supposed to be famously known through the Kingdome) without a solemn publication of their contracts at three severall meetings to the Congregation

tion aſſembled; and that there may no diſpenſation at all be granted to the contrary upon any whatſoever conditions: And if ſome pretend baſhfulneſſe; others feare of malicious prevention (as the Tridentine Doctors ſuggeſt) yet it is fit that both ſhould vaile to the inevitable danger of thoſe miſchievous inconveniencies, which follow upon theſe clandestine matches, and ſilent diſpenſations.

CASE X.

Whether marriages once made may be annulled, and utterly voided; and in what caſes this may be done.

IN what onely caſe a divorce may be made after a lawfull marriage, you have ſeen before; now you inquire of the annulling or voiding of marriages made unlawfully: which doubtleſſe

doubtlesse may be done by just authority upon divers well-grounded occasions: For as it is an indispensable charge, *Those whom God hath joined together let no man put asunder*; so it no lesse truly holds on the contrary; *Those whom God hath forbidden to be joined, let no man keep together.*

Our Casuists are wont to be very copious in this subject, distinguishing betwixt those Impediments which may hinder a Marriage from being made; and those which may undoe and void the Marriage once made. They insist upon many particularities of both kindes; and some perhaps too many: I shall instance onely in those of the latter sort which are unquestionable; whereof the first shall be a mis-prison of the match; when one party is mistaken for another; as when he who by a full contract consented to marry with *Anne*, is by a fraudulent substitution

substitution put upon a marriage with *Mary*; whether upon the likeness of the woman, or the want of a discerning sense in the man; or by some cunning conveyance of the perfidious contrivers; For certainly, it is the consent that makes the marriage; and if the hearts be not joined together by mutuall agreement and affection, the coupling of the hands is but a ceremony utterly ineffectuall: I doubt not but it was in *Jacobs* power to have dis-avowed the match with *Leah*, whom his father in law had deceitfully obtruded upon him, being more injurious in changing his wife, then in ten-times changing his wages; since his heart was not accessory to that match, which the darkness of the night, and the subtlety of a *Laban* had drawne him into.

The like case is in the marrying a bond-woman in stead of a free; a base plebeian in stead of a person of honour:

honour: As then we use to say that mis-reckoning is no payment, so we may well affirme that a mis-marriage is no true wedlock; and therefore justly to be branded with a nullity.

A second may be the foedity and unnaturalnesse of the match; when the parties incestuously marry within the first collaterall degree, of Brothers and sisters; the very mention whereof, even nature it selfe, not depraved, abhorres: so as I cannot but wonder that the Roman Schoole should be so much divided in this point, whiles * *Bonaventure, Richardus*, and *Durand* hold such a marriage even by divine law, a nullity; contrarily *Aquinas, Cajetan, Thomas de Argentina* and others (whom *Covarruvias* recites) defend this to be onely an impediment by the Canon law, and therefore that it may be in

* Martin Alphonf. Vivald. Candelab. aureum. de matrim. & partic. de Consanguin.

the Popes power to dispense with so foule a matrimony ; Against whom upon better reason, * *Scotus*, and *Dominicus à Soto* prove such marriages by the law of nature to be utterly void and null ; with whom all ingenuous Christians cannot but willingly concur in their judgements.

A third may be the horriblenesse of a crime committed in the way to a wicked match ; and that of two sorts : the one of murder, the other of adultery : The former, when the wife hath conspired with the adulterer to murder her husband, with an intent to marry the murtherer ; or in the like case the husband to murder the wife.

The latter when a man living in a knowne adultery with another mans wife, contracts matrimony with the adulteresse in the life time of her husband.

* *Scot. m. 4. d. 40. Sot. ibid. q. un. art. 4.*

A fourth is the indissoluble knot of marriage with a former still surviving husband or wife ; the force whereof is such, as that it frustrates and voideth any supervening matrimony, (except in the case specified in the foregoing discourse of Divorce) during the naturall life of the consorts. Many unhappy, and perplexed cases have we met withall in this kinde ; neither doth it seldome fall out, that the husband being confidently reported for dead in the warres, or in travell abroad ; the wife after some yeares stay, and diligent inquisition , finding the rumour strongly verified by credible testimonies, and tendered oathes, begins to listen to some earnest suitor ; and bestowes her selfe in a second marriage ; not long after which, her onely true, revived husband returnes, and challengeth his right in that his lawfull wife ; pretending the mis-carriage of letters.

letters and messages sent by him in that forced absence. In this case what is to be done? The woman hath cast her selfe upon the danger of a Capitall law, except she have expected the time limited by statute; or if she escape one of the husbands is to seeke for a wife, whom both may not enjoy: Doubtlesse the second marriage, is by Ecclesiasticall authority to be pronounced, as it is, null; which indeed never had any true right to be: and the first must be content to swallow its owne inconveniences.

A fifth may be a violent enforcement of the match: when a woman is upon feare of paine, or death compelled to yeeld her selfe in marriage, and is not perswaded, but affrighted into the bonds of wedlock: surely this is rather a rape then a matrimony, and therefore, upon utter want of consent, a nullity.

A sixth may be a preceding, irremediable

diabie impotency, or incapacity of marriage duties; whether naturall, or advantageous; whether by way of perpetuall maleficiation, or casualty: I say, preceding; for if any such disability be subsequent to the marriage, the nullity is avoided; But if the persons finde in themselves before hand such remedlesse incapability of a marriage estate, they shall be highly injurious to each other, and shall foulely abuse the ordinance of God in their entring into such a condition: For it is apparent, that the maine ends of marriage are herein utterly frustrate; which were by Gods appointment, the propagation of mankinde, and the remedy of incontinency; neither of which being attaineable in such a defective estate of body, justly is such a match pronounced a nullity.

But here I cannot but take occasion to commend the modesty of the women

men of our nation; amongst whom, there are so rare examples of suits in this kinde, prosecuted in our Ecclesiasticall Consistories; it is not to be doubted but there are many defects of this nature to be found every where, yet scarce one in an age offers to complaine, and call for redresse: so as it seemes they are willing to smother all secret deficiencies, in a bashfull silence; whereas those of other warmer regions impatient of the wrongs of their conjugall disappointments, fly out into open contestations, and searelessly seeke for those remedies, which the lawes provided in such cases will allow them. Certainly the merit of this modest temper is so much the greater, by how much more it is concealed from the world; and those of either sexe that are content to bite in their hidden grievances of this kinde, are worthy of double honour

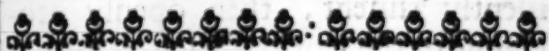
honour from those consorts, whose
injurious infirmities they both
have not disclosed, and suffer in
suppressing.

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honour from their country whole
... ..
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ADDITIONALS.

Certaine cases of doubt,
besides the formerly published,
having been proposed to me, and
received a private solution; I have
thought fit, upon the addresse of a se-
cond Edition, to adjoyne them to their
fellowes, for the satisfaction of any others,
whom the same Cases may concerne.

CASE I.

*Whether a Marriage consummate be-
twixt the Uncle and Neece be so ut-
terly unlawfull, as to merit a sentence
of present separation.*

RESOLUTION.

WHat prodigious Matches
have been of late made,
and are still continued,
upon advantage taken of the unset-
tlednesse of the times, I had rather
silently

silently lament, then openly proclaim to the world: Such as are not capable of any Apology, call for our blushing and teares; but there are some others which dare stand upon the termes of defence: Such is this which you have here propounded on the behalf of your friend, whom it seemes a mis-learned Advocate would faine bear up in a course altogether unjustifiable; that cause must needs be desperately ill, that can find no mercenary abettors: His offensive marriage with his Neece is hartned by a sophisticall pleader; whose wit and skil is so ill bestowed in this case, that I wish his fee might be perpetuall silence: but when he hath made use of his best art to so bad a purpose, those colours of defence, wherewith he thinks to daub over so foul a cause will prove but water-colours, which shall easily be wash'd off by this present confutation.

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It was lawfull, he saith, before the Leviticall Law, thus to Match: So were worse Marriages then this: Let him tell me that *Cain*, and *Enoch*, and *Seth* married their owne Sisters; as *Saturne* also did, by the report of *Diodorus Siculus*; Necessity made it then not unlawfull: It is a just rule of Law, Those things may not be drawne into precedent, which have been yeelded upon mere necessity; as we use to say that necessity hath no law, so it can make none. Afterwards, as mankind grew, nature it selfe taught men to keep further a-loose from their owne flesh; and still remotenessse of distance enlarged it selfe with time.

Abraham (saith he) married his neece *Sarah*, Gen. 11. 29. (if at least *Sarah* were *Isab*) *Nahor* his neece *Milcha*, *Aboram* his Aunt *Fachebed*;

In Argumentum trati nequeunt, quæ propter necessitatem sunt concessa

S

and

and these notwithstanding a large blessing upon the bed. Let him tell me also, that *Jacob* married two Sisters, and conversed conjugally with both (which were now shamefully incestuous) yet was herein blessed with the issue of six of those Patriarchs, who were the root of those glorious stemmes of *Israel*. If we should speak most favourably of these conjunctions, to rank them under *malum inquit prohibitum*, it must needs follow, that till the prohibition came, they could not be censured as *vitium*. Though good Authors make it justly questionable, whether these fore-alleged marriages should deservedly be charged with a sin, or excused by Gods extraordinary dispensation; in the meane time the blessing was to the person, not to the act: even *Lot* in incestuous copulation with his daughters, sped well; two famous nations sprang thence, and of one of them,

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the

the gracious progenitrix of the Saviour of the world; Yet this is no plea for the allowance of that monstrous conjunction. After the law, one justifiable example were worth a thousand before it.

Lo, good *Caleb* (saith he) married his daughter *Achshab* to his brother *Othniel*. *Joshua*. 15. 16. 17. Indeed, this case comes as home to the business as it is farre off from the text. See whether mis-prison of Scripture may mislead us: A man that understands nothing but the English, or Vulgar Latin, may easily run into so foul an error; weigh but the place well, and you will soone finde the fault without me: *Othniel* the son of *Kenaz*, *Caleb*s brother, tooke *Kerath-Sepher*, and *Caleb* gave him *Achshab* his daughter to wife. The English wanting cases expresses it doubtfully, it will be cleare in the Latin, as *Montanus*, and *Pagninus* two great Masters

of the Hebrew in their Interlinear,
 read it, *Othniel filius Kenaꝝ fratris
 Calebi*; *Othniel* the Sonne of *Kenaꝝ*,
 which *Kenaꝝ* was *Caleb's* brother,
 Both the Hebrew and Chaldee cleare
 that ſenſe: So the Septuagint, as *E-*
manuel Sa alſo urges upon that place,
Judg. 1. 13. expreſſly ſay that *Kenaꝝ*
 was the brother of *Caleb*, and not *O-*
thniel; wherein yet I cannot much
 blame an unballanced judgement,
 whiles I find the Septuagint contrary
 to themſelves: For in *Joſh.* 15. 16.
 they ſay, *Othniel* was *Caleb's* younger
 brother; In *Judg.* 3. 9. they ſay, *Kenaꝝ*
 the father of *Othniel* was ſo, for which
 there is no excuſe, but the large ſenſe
 of a Brother in the Hebrew, *We are*
brethren, ſaith *Abraham* to *Lot*, yet
 he was *Lot's* Uncle: So was *Ke-*
naꝝ a Progenitor to *Othniel*, for *Caleb*
 is ſtyled the ſonne of *Jeſebunneh* the
Kenezite, *Joſh.* 14. 14. & *Numb.* 32. 12.
 The caſe was onely this, *Kenaꝝ* was
 to the

the Ancestor of *Galeb*; and one of the same name was his brother, the father of *Othniel*: what can be more plain then 1 *Chron.* 4. 13. And the sons of *Kenaz*, *Othniel* and *Seraiah*. So as if we take this most strictly to the letter, it implies nothing but the marriage of two Cozens German, *Othniel* the sonne of *Kenaz*, and *Achsah* the daughter of *Galeb*; Brothers children, as *Bucer* upon the place, *Melancton* in his *Tra& De Conjugio, Funnis*; and indeed, who otherwise? And now by this time you see what a poore ground this is to build upon; rather, you see a castle, not built on the sand, but in the ayre; meer misconceit.

But, saith the Advocate, this marriage is no where directly forbidden in the Law; I must tell him it is but a meer shuffle to stand upon the termes of a Direct prohibition, when there is one no lesse forceable and convictive

Two wayes may ought be effectually forbidden in the law; Either in plain expression of termes, or in clear implication of sense; surely, that is rather more in the law which it means inrofragably, than what is verbally expresseth. Now, however this be not in the letter of the law, yet in the sense it is: The same law that forbids the Nephew to marry the Aunt, doth *eodem opere*, forbid the Uncle to marry the Neece; In regard as of nearnesse, yea identity of blood, the case is the same; however, some inequality may be conceived in respect of government, and subjection. And if upon some oeconomicall termes, it be more unfit for a Nephew to marry his Aunt, than for an Uncle to marry his Neece, yet in regard of blood, and carnall conjunction, which God principally aymes at in this prohibition, what difference can possibly be conceived? Nature hath made no

other distance betwixt the Nephew, & the Aunt, than betwixt the Niece and Uncle: or if there be any, they must be sharper eyes than mine that can discern it: God himselfe (methinks) hath put this out of doubt, the reason wherewith he backs his command is irresistible; The Nephew shall not marry the Fathers Sister; why so? *For she is thy Fathers neare Kinswoman, ver. 12.* Lo, it is the nearnesse of blood that makes this match unlawfull, not respect of civill inequality; Where the blood then is equally neare, the marriage must be equally unlawfull.

That rule of Law which is pretended, *In prohibitoris, quicquid non prohibetur, permittitur*; What is not forbidden, is permitted, had need of a faire construction; Indeed, that which is not forbidden either in words, or in necessary analogie and implication of sense, is supposed to be left at large;

But what place hath this Axiome in a case not lesse really forbidden, than the expressed? And if wee should strictly follow the letter of this Maxime, it would lead us into *Sodome*; since there are mariages not specified, which would be monstrously incestuous, and such as honesty would blush to mention, as shall appeare in the sequels.

Neither is there any more force in that other, *In pœnalibus non fit extensio*, That penall lawes should not be stretcht further, then their words import. Certainly, in some sense I know no law that is not penall; but why this law, *Thou shalt not marry thy Aunt or Neece* should be rather penall, than, *Thou shalt not commit adultery*, I know not; I am sure learned *Zanchinus* accounts these of the 18. of *Leuiticus*, equally morall: and *Bucanus* holds them to be against the law of nature.

And if in humane laws this axiome may

may challenge a place, yet in the roy-
all lawes of our Maker, where, under
one sin mentioned, all the species and
appendances, and the whole claime
of that wickednesse is wont to be
comprised, doubtlesse it is utterly un-
sufferable; Neither is here any ex-
tension of this prohibition beyond
those limits which God hath fixed in
the undoubted sense of his law; In
the seventh Cōmandement, nothing
is expresse'd but *adultery*, shall wee
therefore say neither *fornication*, nor
pollution, nor *sodomie* is there for-
bidden? were not this to destroy that
law, which God makes to be spiritu-
all; and to open the flood-gates to a
torrent of licentiousnesse? surely, it
is easie to observe that Gods Spirit no
lesse meanes that which he pleaseth to
suppresse. The Psalmist sayes, *Pro-
motion comes neither from the East,
nor from the West, nor from the South;*
Psal. 75. 6. Shall we therefore say, It is
from

from the North? Is not that coast equally excluded, though not exprefsed? It is too much boldness to hold God too strictly to syllables, when it is eafie to determine what he meant to imply: These rules then are ufeleffe: Let me fee now if the Advocate can as eafily shake off one or two rules of law, which I fhall returne upon him in lieu of his. *Is committit in legem, &c.* He wrongs the law who keeping close to the letter, strives againft the intent and purpofe of the law; And that other not unlike, *In fraudem legis facit qui falvis verbis legis sententiam ejus circumvenit*; If this be not the cafe in hand, I fhall profefle to know nothing.

From Rules, let us look to Authorities; It is directly maintained (he faith) by the Canonifts, and Scholemen; But what is it, that is fo maintained? Not this match (let no man thinke fo) but that propofition, *ut* that

that this match is no where directly forbidden in Gods law; If we take it of expresse termes, no wise man ever denied it, not Canonists, and Scholemen onely, or those few named Authours, but all reasonable men concur in this truth; what needs a citation of some, where all agree? But if we take it of the necessary & cleare sense of the law by just Analogie and infallible implication, now, none of the forecited, or any other orthodox Authours will deny the certaine and indubitable prohibition of this marriage. How well the rest will speed, judge by their fore-man, *Tho: Aquinas*; who expressely determines it a false position, that those are joyned together by God, who match within the fourth degree; whereas this is in the third; Not to say how stiffly *Peter Lombard* urges the unlawfulnessse of marriages to the very seventh degree, *vel quasi sine parentela possit agnosci,*

even

even as farre as the kinred may be discern'd, following herein Pope Gregory and Nicholas: To shut up short, none of all his cited Authors dare be any other then professed enemies to this match; no lesse, then the most zealous Commissioner of that now abolished Court, whose late sentence is upon Record enough to this purpose.

As for Zyra, who is trayled in here, and cited strongly in Othoniels case, what shall I say? It grieves my soule to see any well-minded Christian so abused by mis-information: This author hath thus, *Turpitudinem Sororis, &c.* Thou shalt not uncover the nakednesse of thy Fathers Sister, or thy Mothers Sister, (*Ex eodem modo*) and in the same manner is forbidden the marriage betwixt the brother, and the daughter of the Aunt, for it is the same degree: so Zyra: Nothing can be more peremptory against this case,

in favour of which he is alledged.

This would be the issue of all the rest, if it were worth the while to examine them, in that, which yielded, nothing advanceth the cause of the producer. They are all as professed enemies to this match as my selfe; onely they deny an expresse mention of this cause, which was never either thought needfull, or intended to be pleaded.

For the Protestant Divines w^{ch} are cited to give Testimony to the non-prohibition of this marriage, I must cry shame upon those false hands, w^{ch} have so palpably abused both your friend, and the Authors; Let me give but a taste of some, *Melancthon*, *Zanchius*, *Bucanus*; who are said to allow the match, by admitting onely the degrees mentioned to be prohibited; No place is instanced, *versatur in generalibus*; You know the word, but let your eyes be judges of their

their opinion; *Melancthon*, mentioning the marriage of *Abraham* and *Sarah* in the second degree: *Hoc gradus facit in linea inequali &c.* In this degree, in an inequall line, marriages are forbidden by Gods law, because God doth universally ordaine a greater reverence to be yeelded to a Superiour degree, then to an equall; It is the very case in hand, which *Melancthon* thus sentenceth; For *Zanchius*; he citing the text of *Levit.* 18. 13. Thou shalt not uncover the nakednesse of thy Mothers Sister; adds, *ergo neq. mater terram, &c.* Therefore no man, saith he, may marry his Aunt; and that charge, which he gives concerning the Aunt, would God have to be understood also of the Uncle, which is the Fathers brother, or the Mothers brother; whiles he addes a reason of the prohibition, For she is the neare kinswoman of thy Father; or Mother;

Thus

Thus *Zanchius* in his booke *de Operibus Dei*. Lib. 4. *de Sponsalibus*; who absolutely condemnes this marriage as incestuous, and indispenfable.

Bucannus, moving the case of *Abrahams* marriage with *Sarah*; and *Amrams* with *Tachebed* &c. Leaves it in doubt whether these men were (as the times stood) particularly dispensed with by God; or whether they sinned in thus marrying, even before the law, against the law of nature, by which he holds these matches utterly prohibited. With what forehead then, could any Schollar obtrude these false allegations upon an honest client, whether to draw his foot into a snare, or to keepe it there, under pretence of favouring what they professedly oppose.

As for the moderne Jewes, to whom he stretches out his hand for succour, it matters little what they now teach or doc; they are not more with-

without God, then without honesty, or credit; Their opinions are fabulous, their judgement frivolous, and their practice not worth our knowledge, or regard.

I rather descend to the resolution of our owne Church; That our ever honored Mother hath passed her condemnatorie sentence upon this Marriage in her Ratification of that Orthodoxe and just Table of forbidden Degrees, set forth by authority under Archb. Parker, what doubt we now? Doe we acknowledge the Oracular Voice of our dear and holy Mother the Church of England, and yet question whether we should obey it? Certainly in a case of Conscience, a dutifull sonne (me thinks) should rather hold fit to follow the sacred determination of the Church, then the municipall Acts of the civill state. It is an ill office of those that would set Church, and State, Canons and Statutes

tutes, together by the cares even in these points wherein they are perfect friends.

The statute of 32. of *Henry 8. c. 38.* intending to marre the Romish market of gainfull dispensations, and injurious prohibitions, professeth to allow all marriages that are not prohibited by Gods Law; such is this in hand; prohibited, though not in the Letter, yet in necessary inference, and interpretation; The Canon 99. of 1603. hath thus; No person shall marry within the degrees prohibited by the lawes of God, and expresse in a Table set forth by Authority in the yeare 1563. and all marriages so made and contracted shall be adjudged incestuous and unlawfull.

What scruple can arise hence: here is a perfect harmonic betwixt statute, and Canon. It is a mere Cavill (no better) to take And for Or; as if the meaning were, that all degrees whether

whether prohibited by the law of God; or expressed in that Table are forbidden; This is a foule straine both to Grammer, and to the sence and Scope of the Canon, which plainly intends to averre that all those degrees prohibited in that Table are also forbidden by the lawes of God; A truth so certaine, that if either selfe-love, or love of gaine did not betray the eye, it is a wonder how it should abide a contradiction.

It is observable that neither statute, nor Canon speake of an expresse prohibition in Gods Law; And the Canon purposely distinguisheth the termes prohibited by Gods Law, and expressed in the Table, as justly supposing, there may be as strong a prohibition in a sence implied, as verbally expressed: Else, if our Lawes (as is pretended) should give allowance (which God forbid) to any marriages not expressly *interminis*,
for-

forbidden; we should have strange
and uncouth mixtures.

VI God by *Moses* expressly forbade the
uncovering the nakednesse of Father
and Mother; he expressed not the
nakednesse of Son, and Daughter:
He expressly names the nakednesse of
the Fathers wife, he expresseth not
the nakednesse of the Mothers hus-
band; He expressly names the naked-
nesse of thy Sister; he expresseth not
the nakednesse of thy Brother; he ex-
presseth the nakednesse of thy Sons
Daughter, he expresseth not the na-
kednesse of thy Daughters Son: He
expresseth the nakednesse of thy Fa-
thers Wives Daughter, he expresseth
not the Mothers Husbands Son; he
expresseth the Fathers Sister, not
the Mothers Brother; He expresses
the Daughter-in-law, not the Son-in-
law. So as by this Rule, if it should
be carried only by meer verball ex-
pressions, a Woman might marry her
Son-

Son-in-law; the Nephew might marry his great Aunt, the Niece her great Uncle; the Daughter might marry her Mothers Husbands Sonne; the Grand-mother might marry her Daughters Son; the Daughter might marry with her Mothers Husband; Were these things to be allowed, the world would be all Sodomie: These things therefore are of necessity included in the Law by a cleare Analogie, no lesse then if they had been expressed.

But have there been (as he saith) precedents of this match? I am sory to heare it; surely, the more the worse; and the more need to redresse it: the addition of this, if neglected, would help to strengthen an ill claime.

Cozens German, he saith, have been allowed to marry. What is that to the present case? The difference is as much as betwixt a Nephew and an Uncle. The Uncle hath too much of the

the Parents both right, and blood,
to challenge an equall claime with a
Cozen.

In the shutting up, it pitties me to
see your worthy Friend driven to this
plea; and like a drowning man, to
snatch at so small a twigge; *Being*
done (he saith) *it ought not to be un-*
done. Alas, the Canon is peremptory;
It is incestuous and unlawfull; what
plea is there for continuance? Speak
not therefore of either connivence or
dispensation; This match is onely
capable of a late, but much wished
repentance on the Offenders part, and
a just diremption on the part of the
Judges.

the Parents both right and blood
 to challenge. **Case II.** *Whether it be lawfull for a man to
 marry his Wives Brothers Widow.*

Amongst all the heads of Cate-
 divinity there is no one that yield-
 eth more scruples; then this of Mar-
 riage, whether we regard the Qualifi-
 cation of the Persons, or the emer-
 gency of actions, and events. It is
 the lawfulness of this match that
 you inquire after, not the expedience,
 and I must shape my answer accord-
 ingly.

It hath been the wisdom and care
 of our godly and prudent Pædres-
 sors, to ordaine a Table of all the
 prohibited degrees to be publicly
 hang'd up in all the severall Chur-
 ches of this Nation; to which all
 Commers might have recourse for
 satisfaction: This Catalogue you have
 perused, and find no exception of the
 case

case, Specified; I know no reason therefore why you may not conclude it not unlawfull.

The question of the Expedience would require another debate; doubtlesse, in all cases of this nature; it must needs be yeilded that it were more meet, and safe (since the world yeilds so large a latitude of choice) to look further off; A wise and good man will not willingly respasse against the rules of just expedience: and will be as carefull to consider what is fit to be done, as what is lawfull; but that comes not, at this time, within your inquiry.

Whiles therefore I give my opinion for the lawfulnessse of this Marriage with the Relict of the Wives brother; I doe no whit clash (as you charge) with the judgment of B^{is}hop, and Master Perkins, who professe their dislike of such copulations: I shall as readily cry them downe for unmeet,

meet, and inconvenient, as those, that with too much boldnesse come over neare to the Verge of a sinfull conjunction; but for the not unlawfulnessse of this match, I did upon the first hearing, give my affirmative answer: and the more I consider of it, I am the more confirmed in that resolution.

That universall rule mentioned by you, as layd down by those two worthy Authors; must indure a limitation; *Cujus non licet inire nuptias, ejus nec conjugis licet*; that there is the same degree and force of relation of a third person (in the case of marriage) to the husband, and to the wife; so as proximity of blood in the one, should not be a greater barre, then the same proximity of alliance in the other; Otherwise, many more copulations will fall under censure; then common practice will condescend unto; and that ground of *ex parte qua-*
dam

dam viri, The Wife is as a part of the Husband, as it holds not in naturall relation, at all, so not in all conjugall; as might be too easily instanced in divers particulars.

And if there were not some difference in these relations, those second persons which are interess'd in the Husband, or Wife, might not come neare to the next in affinity to them; For example, my Brother may not marry my Sister, therefore by this rule, he might not marry my Wives Sister, and so it should be unlawfull for two Brothers, to marry two Sisters; then which nothing is more ordinary, or lesse obnoxious to disallowance.

That generall rule therefore, must be restrained necessarily, to the first rank of affinity; if we descend lower, it holds not. For further explanation, our Civillians and Canonists are wont to make two kindes or degrees of

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Affinity,

Affinity. The one Primary, the other Secondary; In the first, is the affinity betwixt the Husband, and the Cozens of blood to his Wife, or, *è converse*; which indeed, is justly held no lesse for a barre of marriage, then his own naturall consanguinity; for that is an affinity contracted upon interest of blood, by vertue of that entire union betwixt Man and Wife, whereby they both become one flesh; The Secondary affinity is that, wherein there is another Person added moreover to that first kinde, now mentioned; the affinity arising only from the interest of an affinity, formerly contracted, not from consanguinity; and this is not so binding, as either to hinder a marriage to be contracted, or being contracted, to dissolve it.

In this rank are the Brothers Wife, and Sisters Husband; and therefore, upon the decease of the Brother and Sister, the Husband of the Sister deceased,

ceased, and the Wife of the deceased Brother may marry together, as Dr. *Nicholaus Everhardus* out of *Richardus de Media Villa*, and *Panormitan*, hath clearly determined *; Of this kind is the Marriage now questioned, which therefore doth not fall within the compasse of the prohibition, *Secundum genus affinitatis, &c.* The second kinde of affinity, which is by a Person added unto the first kinde is no barre to Matrimony; And with this judgment I find no reason why I should not concurre; but if any man thinke that he sees just ground to entertaine a contrary opinion, I pre-
judge him not, but modestly leave him to the freedome of his owne thoughts.

* *Consil. Matrimonial, Germanor, Consil. 5.*

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CASE

CASE III.

Whether an incestuous Marriage contracted in simplicity of heart betwixt two Persons ignorant of such a defilement, and so farre consummate as that Children are borne in that bedlocke, ought to be made knowne and prosecuted to a dissolution.

IT is a question (as it may be put) full of doubt and intricacy, Parallel whereunto, and eminent in this kinde, was that case, which I had long since, from the relation of M. Perkins, and since that, have met with it in the report of two severall German Authours.

The case thus : A Gentlewoman of great note in those parts, being left a Widow, had her Sonne trained up in her house ; who now having passed the age of his puberty, grew up, as in stature, so in wanton desires, earnestly soliciting

soliciting her Chamber-maid to his lust; she had the grace, not onely to repell his offers, but being wearied with his wicked importunity, to complaine to her Mistresse, of his impetuous motions: The Mother out of a purpose to repressse this wild humour in her Sonne, bids the Maid, in a seeming yeildance to make appointment the night following with him, at which time she would change beds with the Maid, and school the young man to purpose. This being accordingly done, the Devil so farre prevailed with the Mother, that in stead of chastising, she yeilded to the lust of her Sonne, and by him conceived a Daughter: and now finding her selfe to grow bigge, for the hiding of her shame, she retired secretly to a remote part of the countrey, where she unknowne left the burden of her wombe, and tooke order for all care & secrecy of education: After some

yeares the Mother thinks fit to call home her concealed issue, under the pretence of a Kinswoman, and gives her such breeding in her house, as might become the Child of a Friend: The Maid grew up to such comelinessse, both of person, and behaviour, that the Sonne, now growne a Man, fell into passionate love with her; and in short, married her; little thinking that he was now matched with his owne Daughter, begotten by him of his own Mother: They lived lovingly and comfortably together, and had divers Children betwixt them. Onely the Mother, who was alone conscious of this monstrous copulation, began to finde an hell in her bosome; and in a deep remorse, made the case, at last, knowne to some learned Divines of that time, who bestowed many serious thoughts upon so uncouth a businesse; and finally agreed upon this determination, That
all

all circumstances thoroughly weighed; the penitent Mother should after a sound humiliation secretly make her peace with God, for so foule and prodigious a sin; but that the knowledge of the horrible incestuousnesse of this match, should still, and ever be concealed from the yong couple, who thought of nothing, but a faire and honest legality in this their conjunction.

The decision of this point comes somewhat home to yours; to spend my opinion therefore in this case, I finde no reason, all things considered, to vary from their judgment.

I say then, that the Mothers sinne was not more haynous in yeilding to so abominable an act of incest with her Son, then in smothering the reasonable notice of it for the preventing of a worse incest with her Daughter; for that first act of her incest was transient, but this incest which was

occasioned by her silence was permanent, and derivable to her posterity: She ought therefore, though to her perpetuall shame, when she saw an inclination in her Sonne to so foulely-unnaturall a match, to have forestalled it by a free confession, and to have made him sensible of so odious a procreation : Which not being done, it must needs be said, that, as the first act of the Sonne was a voluntary fornication, but an involuntary incest; so this incestuous copulation of the Sonne with the Daughter, was involuntary in them both; and there cannot be an actuall sinne, wherein there is not a consent of the will.

On the one side, it is shamefull to thinke that so grievous a sinne should passe without some exemplary censure, and that so foule blood should be propagated to succeeding ages, for want of the timely intervention of a
vin-

vindicative authority ; but on the other side, it would be well considered what miserable inconveniences, yea mischeifes would follow upon so late a discoverie ; First all honest hearts are put into a just, but unprofitable horror, to thinke that such a flagitious wickednesse could be committed ; Then the Mother who had rinceed her soule, with a fountaine of teares, for so hatefull a mis-carriage, and reconciled her selfe to that God, who was the onely witnesse of her sin, should be so late exposed to the unseasonable shame of that world, which never was privie to her offence.

As for the young couple thus prodigiously conjoynd, how could they choose, upon the too late notice of their so deplorable condition, but run mad for anguish of soule, and weare out the rest of their dayes in shame, and sorrow ; And for the children borne to them in so detest-

able a wedlock, whom they had formerly beheld with complacence, and comfort, as the ſweet pledges of their conjugall love, how muſt they now needs looke upon them, as the living monuments of their ignominie; and loath them as the moſt baſely-begotten impes of a worſe then beſtiall copulation. And when riper age ſhould bring that unhappy off-ſpring forth into the world, how ſhould they be every where pointed at, and hooted after; as ſome ſtrange aberrations of nature; all which are avoyded by this ſecrecy.

But if on the other ſide you ſhall reply that this one evill is more, then equivalent to all theſe; that in the meane time, theſe parties live in a continuall Inceſt, and traduce it to following generations; I muſt put you in minde, to diſtinguiſh, betwixt the ſtate of Inceſt, and the Sin of Inceſt; It is true, they live in a ſtate of In-

Incest, but, from the sin of Incest they are excused by an ignorance, altogether invincible; an ignorance both of the originall fact, and of their mutual relations; for it is to be supposed, that had they had the least intimation of the naturall interest of Father, and daughter, they would with much indignation have defied so foule a commixture, which even brute creatures (if we may beleeve histories) have by the instinct of nature abominated, and, upon after knowledge, revenged.

And if any light of knowledge should have broken forth unto the parties, of that condition, wherein they stood, then to have continued under that state of Incest, but an houre, had beene damnably sinfull; now all those inevitable consequences of shame and horreur must have beene sleighted and forgotten, and must have shut up in a sodaine dissolution.

But,

But, as there are many degrees of Incest; and the sin is so much more, or lesse haynous, as the parties are nearer, or more remote; I perceive the case intimated by you, concernes a lower ranke of incestuous copulation; namely, an incest arising from a mans carnall knowledge of a person too neare in blood unto her, whom he afterwards marrieth; The fact knowne onely by one, who now doubts whether he be not bound to reveale it: And why not sooner, when so faulty a match might have beene prevented? Why so late, when the remedy intended, would be as noxious as the disease? Why at all, when there is no necessity, or use of the revelation? This question starts another more universall; how farre we may, or ought to make known the secret sin of another? Doubtlesse to prevent some enormous act, which may follow upon our silence; or upon

on

on the urging of lawfull authority, when we are called to give evidence concerning a fact questioned; Or to antevvert some great danger to the publique, to our selves, to our friend, we may, and must disclose our knowledge of a close wickednesse; Or if the act be so haynously flagitious, and redounding to so high dishonour of God, as that our conscience tels us we shall participate of this sinne in concealing it; our holy zeale shall herein beare us out in a just accusation; although in this case, heed must be taken, that our single crimination may be so carried and made good by circumstances, that it draw us not into the perill of a sclander; But, without these, I cannot see, that there-revealing of a secret sinne, can be construed any otherwise, than an act of Detraction; than which, nothing can be more odious and prejudiciall to humane society: We have learn'd
from

from *Aquinas* that there are eight wayes of this hatefull practice ; whereof foure are direct ; the rayfing of a false crime, the amplifying of a true crime ; the disclosing of a crime secret, and the sinister construction of anothers fact. To these, I must adde, that even where the act is such as challengeth a revelation, the time may be unseasonable, and past the date ; You know that the notice of treason, if too long smothered, draws the concealer into danger : and in this case, though there be no perill in the silence, yet there may be injurie : Shortly, this sin, if ever, should have been so early made known to the party concerned, as might have prevented the making up of a match secretly sinfull ; and have convinced the agent of a foule illegality, whereof he was ignorant. But now thus overlate, would break out to an unprofitable vexation ; since this crime which
might

might justly have hindred the marriage from being contracted, ought not to have the force, after so long intermission, and successe of an intervenient wedlock, to dissolve it. The time was, when the Minister in a solemne preconization, called you either *then to speake*, or *for ever after to hold your peace*: had you then spoken it might have beene construed as Zeale, now, not to hold your peace, will be interpreted no better then malice.

might justly have hindered the marriage from being contracted; ought not to have the force, after so long intermission, and success of an intricate wedlock, to dissolve it. The time was, when the Minister in a former protestant, called you to be a member of the church, and you were in his year's service; had you then forsaken it might have been continued as Xcel's name, not to hold your peace, will be a great loss to the church, and the world.



A N
ADVERTISEMENT
TO THE
R E A D E R.

I Have beene earnestly moved by some judicious friends, to goe on with this subject, and to make up a compleat body of Case-Divinity, both practicall, speculative, and mixt, whereof I confesse there is great defect
in

in our language ; But I remember the talke which Plutarch reports to have been betwixt * Crassus, and King Deiotarus, two old ~~men~~ but great undertakers. Crassus jeeres Deiotarus for laying the foundation of a new City in his decayed age ; Deiotarus twits Crassus for going about, in the like age to subdue the warlike Parthians ; both justly supposing our decrepit age a just dissuasive from

* Plu in vita Crassi.

ven-

venturing upon great enter-
prises; Although herein I
should not want a worthy
precedent, that honour of
Navarre, Martinus Az-
pilcueta, who at ninety years
finished the fourth Edition
of that his elaborate Mana-
all of Cases of Conscience.
But as for me, I am suffici-
ently conscious of my owne
inabilities for so long, and
difficult a worke; Onely
this, I shall willingly professe,
that such scruples as I meet
with in my way, I shall not
allow

allow my selfe to balk, and
shall leave the answers upon
the file. In the meane time,
let me incite some of our ma-
ny eminent Divines, whose
wits are fresh, and bodies
vigorous, to goe through with
so usefull a worke, Many
yeares are passed since my
ancient and learned Col-
league, Dr. Ralph Cud-
worth told me that he had
with much labour finished
that taske, and devoted it to
the presse, which yet sleeps in
some private hands. It were
happy

happy if his worthy Sonne,
the just heyre of his Fathers
great abilities, would make
strict inquiry after it, and
procure it to the publique
light, for the common benefit
of Gods Church both in the
present, and succeeding ages.

The End.
